Highlights Healthcare, LLC v. Abell, 2025 NCBC Order 61.

STATE OF NORTH CAROLINA IREDELL COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 25 CVS 1765
HIGHLIGHTS HEALTHCARE, LLC, EMPYREAN HOSPICE, LLC, and HLRE LLC, Plaintiffs/Counterclaim Defendants v. DOUGLAS J. ABELL, JAMES MAGEE, SEAN J. O'REILLY, MICHAEL STANLEY, and CHER ABELL, Defendants, DOUGLAS J. ABELL, JR. and JAMES MAGEE, Counterclaim Plaintiffs, DOUGLAS J. ABELL, JR., JAMES MAGEE, HIGHLIGHTS HEALTHCARE, LLC, and EMPYREAN HOSPICE, LLC, Third-Party Plaintiffs, v. LARRY GRAHAM and KNOX HILL INVESTMENTS, LLC, Third-Party Defendants.	**ORDER ON PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION AND DEFENDANTS' MOTION TO STRIKE**

THIS MATTER is before the Court on Plaintiffs' Verified Motion for Preliminary Injunction ("PI Motion," ECF No. 14) and Defendants' Motion to Strike Affidavit of Larry Graham and Any Related Portions of Plaintiffs' Reply Brief ("Motion to Strike," ECF No. 32, and together with the PI Motion, the "Motions").

THE COURT, having considered the Motions; the briefs; the affidavits and other submissions of the parties; the arguments of counsel; and all other applicable matters of record, **CONCLUDES**, in its discretion, that the Motion to Strike should be **GRANTED in part** and **DENIED in part** and that the PI Motion should be **DENIED**.

TLG Law, by Ty McTier, for Plaintiffs Highlights Healthcare, LLC; Empyrean Hospice, LLC; and HLRE LLC.

Spilman Thomas & Battle, PLLC, by Jeffrey D. Patton, James Earl Simon, and Emily Merritt, for Defendants Douglas J. Abell; James Magee; Sean J. O'Reilly; Michael Stanley; and Cher Abell.

Davis, Judge.

INTRODUCTION

1. This case arises following the termination of Defendants Douglas Abell and James Magee from Highlights Healthcare, LLC ("Highlights")—a company that they founded to provide applied behavior analysis ("ABA") therapy services to children with autism. Highlights and two related entities—Empyrean Hospice, LLC ("Empyrean") and HLRE, LLC ("HLRE," and together with Highlights and Empyrean, "Plaintiffs")—assert that Abell and Magee have misappropriated Plaintiffs' confidential information and trade secrets and are now using them to unlawfully compete against Plaintiffs in violation of certain restrictive covenants that Abell and Magee previously signed. Plaintiffs have filed the present PI Motion seeking to enforce those restrictive covenants and to prevent the disclosure of their proprietary information by Abell, Magee, and the other individuals named as defendants.

FACTUAL AND PROCEDURAL BACKGROUND

2. The Court provides the following factual background solely for the purpose of resolving the present PI Motion. It is not binding in any subsequent proceedings in this action. *See Lehrmann v. Iredell Mem'l Hosp., Inc.*, 174 N.C. App. 63, 75 (2005) (noting that "[i]t is well settled that findings of fact made during a preliminary injunction proceeding are not binding upon a court at trial on the merits"), *disc. rev. denied*, 360 N.C. 364 (2006).

3. Highlights is a Delaware limited liability company with its principal place of business in Mooresville, North Carolina. (Am. Compl., ECF No. 6, ¶¶ 3, 12.) Highlights is primarily in the business of providing early intervention, diagnostic, and ABA therapy services to children with autism. (Am. Compl. ¶ 3.)

4. When it was formed in early 2019, Highlights was funded exclusively by Abell and Magee. (Am. Compl. ¶ 12; Abell Aff., ECF No. 21.1, ¶ 2; Magee Aff., ECF No. 21.2, ¶ 1.) However, beginning in April 2021, Third-Party Defendant Larry Graham began investing in Highlights through a holding company, Third-Party Defendant Knox Hill Investments, LLC ("Knox Hill"). (Am. Compl. ¶ 12; Abell Aff. ¶ 4; Magee Aff. ¶ 3.) Following Graham's investment, the ownership interests in Highlights were ultimately divided as follows: Graham—through Knox Hill—held an eighty percent interest; Abell held a 6.67 percent interest; Magee held a ten percent interest; and a non-party to this action held a 3.33 percent interest. (Abell Aff. ¶ 4; Magee Aff. ¶ 3; Graham Aff., ECF No. 24, ¶ 10.)

5. On 1 January 2022, Abell and Magee entered into three agreements with respect to the future operation of Highlights: (1) a Highlights LLC Agreement (Am. Compl. Ex. A); (2) a Unit Purchase Agreement (Graham Aff. Ex. B); and (3) a set of Restrictive Covenant Agreements ("Restrictive Covenants," Am. Compl. Ex. B–C).

6. The Restrictive Covenants included non-competition, non-solicitation, confidentiality, and non-disparagement provisions. (*See* Am. Compl. Ex. B–C.)

7. At that time, Magee was serving as Highlights's Chief Executive Officer, and Abell was the company's General Counsel. (Am. Compl. ¶ 21; Abell Aff. ¶ 10; Magee Aff. ¶ 6.)

8. On 17 August 2022, Abell, Magee, and Graham formed HLRE. (Am. Compl. ¶ 15; Abell Aff. ¶ 12; Magee Aff. ¶ 11.) HLRE is a North Carolina limited liability company that shares its principal place of business with Highlights. (Am. Compl. ¶¶ 15, 19; Abell Aff. ¶ 12; Magee Aff. ¶ 11.) HLRE primarily facilitates real estate transactions involving Highlights. (Am. Compl. ¶ 3; Abell Aff. ¶ 12; Magee Aff. ¶ 11.)

9. Since its inception, Graham has held an eighty percent ownership interest in HLRE, while Abell and Magee have each held a ten percent interest. (Abell Aff. ¶ 13; Magee Aff. ¶ 12; Graham Aff. ¶ 22.)

10. On 27 April 2023, Abell and Graham formed Empyrean. (Am. Compl. ¶ 17; Abell Aff. ¶ 15.) Empyrean is a Delaware limited liability company that shares its principal place of business with Highlights and HLRE. (Am. Compl. ¶¶ 17, 19;

Abell Aff. ¶ 15.) Empyrean is primarily engaged in the business of providing hospice and palliative care services to individuals with terminal illnesses. (Am. Compl. ¶ 3.)

11. In addition to Abell and Magee, the remaining named defendants in this action are Sean O'Reilly, Michael Stanley, and Cher Abell[1] (together with Abell and Magee, "Defendants"). O'Reilly, Stanley, and Cher Abell have never been affiliated with, owned an interest in, or been employed by Highlights, Empyrean, or HLRE. (O'Reilly Aff., ECF No. 21.3, ¶¶ 2–3; Stanley Aff., ECF No. 21.4, ¶¶ 2–3; Cher Abell Aff., ECF No. 21.5, ¶ 2.)

12. Plaintiffs contend that at all relevant times Highlights, Empyrean, and HLRE have been under common control, operated from the same principal office, and shared strategic direction, executive oversight, and business infrastructure. (Am. Compl. ¶ 19.) Although the record is not clear as to who served as the actual manager of these three companies, the parties appear to agree that Graham has acted as the *de facto* manager of each of the companies. Defendants assert that he has done so by "plac[ing] himself above" Abell and Magee in each of the companies' daily decision-making processes by virtue of his majority ownership interests (either individually or through Knox Hill). (Abell Aff. ¶ 24; Magee Aff. ¶ 21.)

13. Through their roles as members and executive officers of Highlights, Abell and Magee had "full access" to Plaintiffs' confidential and proprietary information. (Am. Compl. ¶ 23; Abell Aff. ¶¶ 10–11; Magee Aff. ¶¶ 9–10.)

[1] Cher Abell is the wife of Douglas Abell.

14. In November 2023, dissatisfied with Magee's performance as the Chief Executive Officer of Highlights, Graham informed Magee that Abell would be replacing him and assuming the role of Chief Executive Officer for each of the companies. (Am. Compl. ¶ 22; Abell Aff. ¶ 23; Magee Aff. ¶ 20.)

15. Plaintiffs allege that between April and September 2024, Abell and Magee began working with O'Reilly and Stanley to engage private equity companies for the purpose of obtaining investors—or a purchaser—for Empyrean. (Am. Compl. ¶¶ 46–60.)

16. Throughout this period, Abell, Magee, O'Reilly, and Stanley collaborated to create various presentations for potential investors about the hospice care industry. (Am. Compl. ¶¶ 47–48; Am. Compl. Ex. O.)

17. In September 2024, Abell approached Graham to inform him that a private equity investment firm—Shore Capital Partners ("Shore Capital")—was interested in working with Empyrean, but Graham ultimately decided not to proceed with the discussions with Shore Capital. (Am. Compl. ¶ 57.)

18. Plaintiffs allege that Abell, Magee, O'Reilly, and Stanley continued to pursue a partnership with Shore Capital for the purpose of establishing a competing hospice care business. (Am. Compl. ¶¶ 58–61.)

19. Around this same time, Abell registered the company name "Lamplight Hospice, LLC" ("Lamplight Hospice") with the Delaware Secretary of State's office. (Am. Compl. ¶ 54; Am. Compl. Ex. S.)

20. Shortly thereafter, in December 2024—following a series of confrontations involving Graham, Abell, and Magee—Magee's employment with Highlights and HLRE was terminated. (Am. Compl. ¶ 29; Magee Aff. ¶¶ 27–30.) Abell's employment with each of the companies was likewise terminated the following month in January 2025. (Am. Compl. ¶ 31; Abell Aff. ¶¶ 40–41.)

21. Highlights subsequently emailed Abell to demand that he return all company property, including the physical documents and laptop in his possession. (Am. Compl. ¶ 82.)

22. Plaintiffs allege that upon checking its digital administrative portal to confirm that Abell's access to Plaintiffs' network had been cut off, on 20 January 2025 Highlights discovered that Abell had gained access to Plaintiffs' network through a local "operations" account. (Am. Compl. ¶¶ 83–85.)

23. As a result, Plaintiffs quickly worked to disable Abell's screen visibility, keyboard, and mouse controls, and removed all other user accounts through which Abell could access the network. (Am. Compl. ¶ 84.)

24. Following his termination, Plaintiffs began conducting an internal review of email accounts that had been previously associated with Abell. (Am. Compl. ¶ 88.)

25. During this process, on 8 February 2025 Abell's Empryean-assigned email address received an email from Walter Eckert, an employee of Blue and Co. ("Blue")—Plaintiffs' accounting firm. (Am. Compl. ¶ 88.) Eckert's email included a meeting invitation and an attachment titled "Copy of Lamplight Hospice 2025

Model.xlsx" (the "Lamplight Model"). (Am. Compl. ¶¶ 88, 90; Am. Compl. Ex. AE, AG.)

26. Plaintiffs describe the Lamplight Model as "bear[ing] a striking resemblance to" and being "substantially the same document" as Plaintiffs' own proprietary "NIFO Model." (Am. Compl. ¶ 92–94; *see also* ECF No. 38 [sealed].)

27. Put simply, the NIFO Model is a financial document that includes itemized ledger descriptions and values for Empyrean's monthly income and expenses as well as future performance projections. (Am. Compl. ¶ 94; *see also* ECF No. 38 [sealed].)

28. Plaintiffs assert that they never provided the NIFO Model—or the Lamplight Model—to Blue. (Am. Compl. ¶ 95.) Rather, they contend that Abell took the proprietary information contained in the NIFO Model, used it to create a virtually identical document bearing a heading referencing "Lamplight Hospice," and then provided the revised document to Blue—all for the purpose of establishing a competing entity. (Am. Compl. ¶¶ 92–95, 142.)

29. Around that same time, on 6 February 2025 a longtime friend of Magee's—Jack Crawford—formed a limited liability company in Georgia called Lamplight Behavior Analysis, LLC ("Lamplight Behavior"). (Am. Compl. ¶ 74; Crawford Aff., ECF No. 21.6, ¶¶ 4, 12.) Lamplight Behavior is primarily engaged in the business of providing ABA therapy services for early intervention in patients with autism and operates a facility in Holly Springs, Georgia—less than twenty miles from one of Highlights's operating locations. (Am. Compl. ¶¶ 74–75; Crawford Aff. ¶ 2.)

30. Plaintiffs contend that Lamplight Behavior is a direct competitor of Highlights.[2] (Am. Compl. ¶¶ 73–78.)

31. None of the Defendants have an ownership interest in—or are employed by—Lamplight Behavior. (Abell Aff. ¶ 46; Magee Aff. ¶ 36; O'Reilly Aff. ¶ 5; Stanley Aff. ¶ 5; Cher Abell Aff. ¶ 4; Crawford Aff. ¶¶ 4–10.)

32. At some point, Crawford retained Abell's law firm—which Abell founded following his termination from Highlights—with regard to Lamplight Behavior for the purpose of obtaining legal advice, if necessary. (Abell Aff. ¶ 45; Crawford Aff. ¶ 6.) However, Abell and Crawford have testified that as of the present date no fees have been paid from Highlights Behavior to Abell's firm. (Abell Aff. ¶ 45; Crawford Aff. ¶ 6.)

33. It appears to be undisputed that no business bearing the name "Lamplight Hospice, LLC" (or any derivation of that name) exists as of the present date.

34. Plaintiffs initiated this action on 16 May 2025 by filing a Complaint (ECF No. 3) in Iredell County Superior Court asserting various claims for monetary relief against Defendants.

35. On 9 June 2025, Plaintiffs filed a First Amended and Verified Complaint ("Amended Complaint"). Although the Amended Complaint also asserts a number of other claims for relief, the only claims relevant to the PI Motion are their claims for

[2] Lamplight Behavior does not, however, provide any hospice or palliative care-related services.

breach of contract, misappropriation of trade secrets, and unfair and deceptive trade practices ("UDTP").

36. This matter was designated as a complex business case and assigned to the undersigned on 17 June 2025. (ECF Nos. 1–2.)

37. Plaintiffs filed their PI Motion on 26 June 2025, and Defendants filed the Motion to Strike on 6 August 2025.

38. The Motions came on for a hearing before the Court via Webex on 14 August 2025, at which Plaintiffs and Defendants were represented by counsel.

39. Having been fully briefed, the Motions are now ripe for resolution.

ANALYSIS

I. Motion to Strike

40. Defendants have moved to strike the affidavit of Graham (which was filed in conjunction with Plaintiffs' reply brief in support of their PI Motion) on two grounds.

41. First, Defendants contend that because Plaintiffs failed to submit any supporting affidavits at the time they originally filed the PI Motion and instead relied solely on the allegations in their verified Amended Complaint, Plaintiffs should not be permitted to file supporting affidavits along with their reply brief. Second, Defendants argue that because (1) the Amended Complaint contains a number of key allegations that are pled "upon information and belief"; (2) Graham was the person who verified the Amended Complaint; and (3) Graham's affidavit contains affirmative factual assertions on various matters that were merely pled upon information and

belief in the Amended Complaint, the Court should not consider those portions of Graham's affidavit that fall within this category.

42. In response, Plaintiffs assert that Graham's affidavit merely responds to matters newly raised by Defendants in their opposition to the PI Motion.

43. "The introduction of evidence into the record, including the Court's decision on a motion to strike an affidavit, is left to the sound discretion of the trial court." *W&W Partners, Inc. v. Ferrell Land Co.*, 2019 NCBC LEXIS 104, at *3 (N.C. Super. Ct. Dec. 6, 2019) (cleaned up); *see also In re Est. of Phillips*, 251 N.C. App. 99, 104 (2016) (noting that North Carolina's appellate courts "review an order striking an affidavit . . . for abuse of discretion").

44. Under Rule 602 of the North Carolina Rules of Evidence, "[a] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter." N.C. R. Evid. 602. Accordingly, "[a]n affidavit must be based on personal knowledge, and its allegations should be of the pertinent facts and circumstances, rather than conclusions." *Lemon v. Combs*, 164 N.C. App. 615, 622 (2004) (cleaned up). "[S]tatements in affidavits as to opinion, belief, or conclusions of law are of no effect." *Id.*; *see also In re Foreclosure by David A. Simpson, P.C.*, 211 N.C. App. 483, 496 (2011) (noting that a legal conclusion "postured as an allegation of fact . . . will not be considered by th[e] Court").

45. This Court has stated on a number of occasions that reply affidavits must be limited to matters newly raised by the non-moving party in its response brief. *See W&W Partners, Inc.*, 2018 NCBC LEXIS 210, at *2 n.1 (granting a motion to

strike reply affidavits "contain[ing] factual information not presented with the initial PI [m]otion, as well as information outside the scope of [d]efendants' [b]rief in [o]pposition to the [m]otion"); *Kerry Bodenhamer Farms, LLC v. Nature's Pearl Corp.*, 2016 N.C. Super. LEXIS 227, at *1–2 (N.C. Super. Ct. Sept. 21, 2016) (noting that the Business Court Rules do not permit reply affidavits to "contain evidence beyond the matters newly raised in [d]efendant's response" (cleaned up)); *see also* BCR 7.5–7.6 (stating that "[a]ll materials, including affidavits, on which a motion relies must be filed with the motion or supporting brief" and that "[a] reply brief must be limited to discussion of matters newly raised in the responsive brief").

46. Based on its thorough review of the Amended Complaint and Graham's affidavit, the Court finds that portions of Graham's affidavit impermissibly address issues that were not newly raised in Defendants' response brief. Moreover, the Court further agrees with Defendants that in the affidavit Graham purports to state a number of facts that were previously alleged merely upon information and belief in the Amended Complaint—which Graham verified. However, other portions of his affidavit respond to new issues that were, in fact, raised by Defendants in their brief in opposition to the PI Motion and appear to be based on Graham's personal knowledge.

47. This Court addressed a similar issue in *Global Textile Alliance, Inc. v. TDI Worldwide, LLC* and stated as follows:

> In support of its Motion for Preliminary Injunction, GTA originally filed only three affidavits and largely relied on the allegations made in the Verified Complaint. The Reply Affidavits filed by GTA are much lengthier and more detailed than the original affidavits. The Court

> concludes that much of what is contained in the reply affidavits is information that should have been included in GTA's initial affidavits in support of the Motion for Preliminary Injunction. Nonetheless, certain portions of the Reply Affidavits address issues newly raised by Defendants in their responses to GTA's Motion for Preliminary Injunction.
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> . . .
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> The Court believes it can parse the reply brief and affidavits and consider only the parts of the brief and affidavits that address information newly raised in Defendants' responses. Accordingly, in considering the Motion for Preliminary Injunction, the Court will consider those parts of the reply brief and affidavits that address issues newly raised in Defendants' responses[] and will disregard the remaining portions.

2017 NCBC LEXIS 108, at *14–15 (N.C. Super. Ct. Nov. 21, 2017).

48. The Court will adopt the same course of action here.

49. Accordingly, Defendants' Motion to Strike is **GRANTED in part** and **DENIED in part**. The Court's analysis set forth below regarding Plaintiffs' PI Motion does not take into account any portions of Graham's affidavit that are either not responsive to newly raised arguments by Defendants or that relate to matters that were alleged upon information and belief in the Amended Complaint.

II. PI Motion

50. A preliminary injunction "is an extraordinary measure taken by a court to preserve the status quo of the parties during litigation." *Ridge Cmty. Invs., Inc. v. Berry*, 293 N.C. 688, 701 (1977). Accordingly, the Court will only issue a preliminary injunction:

> (1) if a plaintiff is able to show likelihood of success on the merits of his case and (2) if a plaintiff is likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the Court, issuance is

> necessary for the protection of a plaintiff's rights during the course of litigation.

A.E.P. Indus., Inc. v. McClure, 308 N.C. 393, 401 (1983) (cleaned up).

51. "The burden is on the moving party to establish its right to a preliminary injunction, and the remedy should not be lightly granted." *Comp. Design & Integration, LLC v. Brown*, 2017 NCBC LEXIS 8, at *19 (N.C. Super. Ct. Jan. 27, 2017) (cleaned up).

52. The issuance of such injunctive relief "is a matter of discretion to be exercised by the hearing judge after a careful balancing of the equities." *State ex rel. Edmisten v. Fayetteville St. Christian Sch.*, 299 N.C. 351, 357 (1980) (cleaned up).

53. As an initial matter, Plaintiffs make no serious attempt to show why Defendants O'Reilly, Stanley, or Cher Abell should be subject to a preliminary injunction. Instead, Plaintiffs' arguments relate almost entirely to acts allegedly taken by Abell and—to a lesser extent—Magee.

54. Plaintiffs assert that they have shown a likelihood of success on the merits with respect to their claims against Abell and Magee for breach of contract and misappropriation of trade secrets. Plaintiffs further contend that those two claims serve as predicates for their UDTP claim.

55. However, the merits of their argument are severely undermined by the significant portions of the Amended Complaint that rely on allegations made "upon information and belief." The following are representative examples:

> *Upon information and belief*, following their separation from the company and repudiation of previously agreed-upon ownership transfers, Defendants Magee and Abell began actively coordinating to undermine the company and its leadership. This includes their joint

efforts to bring a purported shareholder derivative claim—despite relinquishing their ownership interests—and to assert unfounded and baseless claims of religious discrimination against the company. Plaintiffs contend that these efforts are retaliatory in nature and are being pursued in bad faith as leverage in their ongoing refusal to acknowledge the validity of the repurchase agreements and their termination of status as members.

. . .

Upon information and belief, during Defendants' time as a unitholder Defendants conceived of and began developing business concepts, marketing materials, service models, and other intellectual property related to ABA and hospice operations—fields in which the Company was actively operating or planning to expand.

. . .

In or around the last quarter of the year several Empyrean employees left the Company for a competitor, causing Plaintiffs to request key personnel to sign non-compete and non-solicitation agreements with a severance package offered as adequate consideration. *Upon information and belief*, not soon after, in early December 2024 Defendants directly or indirectly solicited many key personnel, like Gusti McGee, Ian Swank [sic], as they were later terminated by Abell, and others immediately resigned, with hopes of waiting out the non-compete and non-solicit, paid by Plaintiff's severance, while Defendants formed the new competing business.

. . .

Upon information and belief, on or around March 6, 2025, at or about 4:55p.m. Abell sent text messages to two Highlight employees indicating that he was starting his own healthcare law firm. However, when the employees went back to the text message, he edited the message to now include a paper icon. The employees had no immediate concern as they believed this was a nice opportunity for Abell.

However, *upon information and belief*, on or around April 30, 2025, Alexis Rand ("Lexi"), Chief Clinical Officer of Lamplight Behavior Analysis, reached out to the same Highlights employees, indicating that she was "*working with [or for] Doug, regarding a new venture, and that the employees needed legal representation and advised that the attorney needed to specialize in healthcare*," or words to that effect. Lexi also said, "*they don't want to start anything new, and that they have Cleveland contracts with ABA companies*," or words to that effect.

. . .

Upon information and belief, Magee and Abell started a competing ABA company about two (2) months ago from the filing of this Complaint.

. . .

Upon information and belief, Abell—believed to be affiliated with Lamplight Behavior Analysis—has repeatedly sent LinkedIn connection requests to one of Plaintiff's key employees. The frequency and persistence of these request [sic] suggest an intent to solicit or establish contract [sic] for recruitment purposes, in violation of the non-solicitation provisions of the Restrictive Covenant.

Furthermore, seeing that Magee and Abell began collaborating on all legal matters together, *upon information and belief*, Magee is working with Abell to unfairly compete, and breach his Restrictive Covenant by soliciting Plaintiffs' vendors, and interfering with Plaintiffs' business relationships.

On April 9, 2025, Magee called Staples—Highlights' office supply's vendor; and unable to connect with the representative, he leaves [sic] a message indicating that he is returning a call. However, *upon information and belief* no one from Staples called him.

. . .

At approximately 9:15 AM (EST) on or around Monday, January 20, 2025, Plaintiff checked its system again and found that Abell was online, remoting in, and working on the laptop device. *Upon belief*, Abell had the ability to download all company documents to an external drive. Plaintiff, then disabled screen visibility, keyboard/mouse [sic] and began removing all user accounts.

. . .

Plaintiffs never directly or indirectly provide [sic] the NIFO Model nor a Lamplight Model to Blue, but *upon information and belief*, Defendants Abell in concert with O'Reilly and Stanley directly provided the Lamplight Model to Blue.

Upon information and belief, Defendants used confidential information, including business plans, proprietary strategies, and employee information to advance the competing venture.

. . .

> *Upon information and belief*, Defendant Abell knowingly misappropriated and used these Trade Secrets in connection with forming a competing business and soliciting Plaintiffs' employee and clients, without consent or authorization.
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> . . .
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> *Upon information and belief*, Abell entered into agreement and acted in concert with other parties, including but not limited to [Sean O'Reilly and Michael Stanley ("Co-Defendants")], to misappropriate Plaintiff's trade secrets and confidential business information.
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> . . .
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> Co-Defendants had the opportunity, as they were working with Abell in the work of establishing a competing company, suggesting [sic] using Plaintiffs' proprietary data to present to potential investors and other material parties. The Co-Defendants were engaged in all parts of Abell's actions regarding the competing company and, *upon information and belief*, still engage with Defendant Abell. Actively participating in Abell's conduct, Co-Defendants knew and/or should have known that the proprietary data was misappropriated.
>
> . . .
>
> *Upon information and belief*, Defendant Abell created such intellectual property during his time as a unitholder, and failed to disclose or assign it, instead retaining it for personal use and for the benefit of a competing entity.

(Am. Compl. ¶¶ 37, 64, 67, 70–71, 73, 77–79, 84, 95–96, 147, 154, 156, 203 (emphasis added in part and internal citations omitted).)

56. These allegations are central to Plaintiffs' claims for breach of contract and misappropriation of trade secrets.

57. North Carolina courts have repeatedly made clear that a plaintiff cannot meet its burden of establishing a likelihood of success on the merits for a preliminary injunction through allegations made upon information and belief. *Vanguard Grp., Inc. v. Snipes*, 2022 NCBC LEXIS 55, at *14 (N.C. Super. Ct. June 6, 2022) (holding

that "conclusory allegations made upon information and belief" were insufficient); *see also Evergreen Builder Sols., LLC v. Taylor*, 2025 NCBC LEXIS 67, at *9 (N.C. Super. Ct. June 5, 2025) (concluding that the plaintiff had not shown a likelihood of success on the merits where "[m]any of the material allegations of [p]laintiff's complaint . . . [were] made upon information and belief, conjecture, and suspicion"); *Swim Club Mgmt. Grp. of Raleigh, LLC v. Calvin*, 2024 NCBC LEXIS 125, at *10 (N.C. Super. Ct. Sept. 17, 2024) (recognizing that "where a party's request for . . . injunctive relief is grounded in speculation, the Court will require further evidence before it can reach the conclusions that the party seeks" (cleaned up)).

58. Furthermore, it is important to note that in responding to the PI Motion, all of the named Defendants have submitted sworn affidavits (including a lengthy and detailed affidavit from Abell) that are sufficient to rebut—for purposes of the PI Motion—numerous key allegations made in the Amended Complaint.

59. Thus, Plaintiffs' failure to show a reasonable likelihood of success on the merits of their claims is an independent and adequate basis for denying the PI Motion.

60. However, denial of the PI Motion is also proper based on Plaintiffs' inability to establish that they will suffer irreparable harm if the PI Motion is not granted.

61. With respect to the second prong of the preliminary injunction standard, this Court has explained as follows:

> North Carolina courts have held that in assessing the preliminary injunction factors, the trial judge "should engage in a balancing process,

> weighing potential harm to the plaintiff if the injunction is not issued against the potential harm to the defendant if injunctive relief is granted. In effect, the harm alleged by the plaintiff must satisfy a standard of relative substantiality as well as irreparability." *Williams v. Greene*, 36 N.C. App. 80, 86 (1978).
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> Irreparable injury under Rule 65 is established upon a showing that "the injury is beyond the possibility of repair or possible compensation in damages" or "that the injury is one to which the complainant should not be required to submit or the other party permitted to inflict, and is of such continuous and frequent recurrence that no reasonable redress can be had in a court of law." *A.E.P. Indus., Inc.*, 308 N.C. at 407 (citing *Barrier v. Troutman*, 231 N.C. 47, 50 (1949)) (emphasis omitted).
>
> If there is a "full, complete and adequate remedy at law," the moving party is not entitled to the equitable remedy of injunction. *Bd. of Light & Water Comm'rs v. Parkwood Sanitary Dist.*, 49 N.C. App. 421, 423 (1980). "[O]ne factor used in determining the adequacy of a remedy at law for money damages is the difficulty and uncertainty in determining the amount of damages to be awarded for defendant's breach." *A.E.P. Indus., Inc.*, 308 N.C. at 406–07.

Comp. Design & Integration, LLC, 2017 NCBC LEXIS 8, at *19–20.

62. Furthermore, in cases of alleged misappropriation of trade secrets, "an applicant for a preliminary injunction must do more than merely allege that irreparable injury will occur. The applicant is required to set out with particularity facts supporting such statements so the court can decide for itself if irreparable injury will occur." *N.C. Farm P'ship v. Pig Improvement Co.*, 163 N.C. App. 318, 323 (2004) (cleaned up).

63. Here, the most tangible assertions Plaintiffs offer on this issue are their allegations that Abell shared the confidential and proprietary information from the NIFO Model with Eckert by sending him a copy of the Lamplight Model. Plaintiffs contend that the NIFO Model—and, by extension, the Lamplight Model—can be used as a blueprint for establishing a successful competing hospice care business and that

they would likely suffer irreparable harm if the Lamplight Model was disclosed to Plaintiffs' competitors.

64. However, Plaintiffs admit that no Lamplight Hospice facility has ever come into existence, and Plaintiffs' counsel conceded at the 14 August hearing that he was unaware of any current plans for a new entity associated with Abell or Magee to enter the market to compete with Plaintiffs.

65. Moreover, Plaintiffs have failed to persuasively explain how Abell allegedly providing the Lamplight Model to Eckert—whose company served as Plaintiffs' accounting firm—is likely to cause them to suffer irreparable harm.

66. Moreover, even taking as true Plaintiffs' assertion that Lamplight Behavior serves as a direct competitor to Highlights, Plaintiffs' counsel conceded at the 14 August hearing that the facility became operational several months ago in June 2025. Therefore, the prospect of that facility being opened cannot be characterized as *future* harm that would be avoided by the issuance of a preliminary injunction.[3] *See Merz Pharms., LLC v. Thomas*, 2024 NCBC LEXIS 70, at *35 (N.C. Super. Ct. May 15, 2024) ("With regard to Merz Pharmaceuticals' concern about the effect of Thomas' solicitation efforts on Daxxify receiving formulary coverage, that ship has sailed. During the briefing period in connection with the present PI Motion, Daxxify obtained formulary coverage in April 2024.").

67. Thus, for this additional reason as well, denial of Plaintiffs' PI Motion is appropriate. *See Digital Recorders, Inc. v. McFarland*, 2007 NCBC LEXIS 23, at *20

[3] Moreover, Plaintiffs have failed to offer any persuasive and admissible evidence that Abell or Magee played a part in the formation or opening of Lamplight Behavior.

(N.C. Super. Ct. June 29, 2007) (finding no irreparable harm based on a "dearth of evidence . . . that [defendants] have used any confidential information or trade secrets belonging to [plaintiff]" and "pitifully vague" allegations that "defendant ha[d] solicited [plaintiff's] customers"); *Unimin Corp. v. Gallo*, 2014 NCBC LEXIS 44, at *39 (N.C. Super. Ct. Sept. 4, 2014) (concluding that the plaintiff had failed to present "substantial evidence" of a "specific opportunity to . . . use [p]laintiff's alleged trade secrets" to demonstrate irreparable harm).

CONCLUSION

THEREFORE, the Court, in the exercise of its discretion, **CONCLUDES** that Plaintiffs' Motion for a Preliminary Injunction should be **DENIED**.

SO ORDERED, this the 21st day of August 2025.

/s/ Mark A. Davis
Mark A. Davis
Special Superior Court Judge for
Complex Business Cases