

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 13907

JORDAN HARRIS,
Plaintiff,

v.

TEN OAKS MANAGEMENT, LLC;
ECO DIGITAL HOLDINGS, LLC;
and SSE SERVICE HOLDINGS,
LLC,

Defendants.

**ORDER ON
MOTIONS TO SEAL**

1. This Order addresses five motions to seal filed in connection with the parties' motions for summary judgment.

A. Procedural History

2. On 22 December 2022, Defendant Ten Oaks Management, LLC filed a motion for summary judgment, (ECF No. 46), a supporting brief, (ECF No. 47), and thirteen exhibits, (ECF Nos. 46.2–.14). Ten Oaks also filed a motion to seal portions of Exhibits A, C, E, H, and I. (*See* ECF No. 48.) One week later, Ten Oaks filed public, redacted versions of Exhibits A, C, H, and I, (ECF Nos. 54.1–.4), and a notice of filing Exhibit E entirely under seal, (ECF No. 54).

3. On 28 December 2022, Plaintiff Jordan Harris provisionally filed under seal his motion for summary judgment, (ECF No. 50), a supporting brief, (ECF No. 51), and five of the six exhibits thereto, (ECF Nos. 50.2–.4, .6, .7). A motion to seal accompanied these filings. (ECF No. 52.) Harris filed an amended motion to seal on

4 January 2023, in which he seeks to seal only portions of Exhibits A–C and F to his summary judgment motion. (*See* ECF No. 55.)

4. On 20 January 2023, Harris filed his brief in opposition to Ten Oaks’ summary judgment motion, (ECF No. 57), and twenty-four supporting exhibits, (ECF Nos. 57.2–.25). Seventeen of those exhibits were filed under seal. Three days later, Harris moved to seal those seventeen exhibits. (*See* ECF No. 58.)

5. On 27 January 2023, Ten Oaks filed a motion to seal six of the fourteen exhibits it filed in support of its brief in opposition to Harris’s summary judgment motion. (*See* ECF No. 63.) Ten Oaks timely filed public, redacted versions of those six exhibits on 6 February 2023. (*See* ECF Nos. 68.1–.6.)

6. On 30 January 2023, Ten Oaks filed its reply in support of its motion for summary judgment and nine supporting exhibits. (ECF Nos. 65, 66.1–.9.) Exhibits A, C, and F were filed under seal. (*See* ECF Nos. 66.1, .3, .6.) No motion to seal accompanied these filings. Ten days later, Ten Oaks filed public, redacted versions of the three sealed exhibits. (*See* ECF Nos. 69.1–.3.)

B. Voluminous Filings, Lack of Consultation, and Procedural Irregularities

7. The parties’ motions to seal and accompanying filings fail to comply with Rules 5 and 7 of the Business Court Rules (“BCR”) to varying degrees. The Court will address these shortcomings in turn.

8. Over the course of their briefing, the parties repeatedly refiled the same exhibits, some as many as six times. The Court disfavors voluminous, repetitive filings. BCR 7.5 states that “[m]aterials that have been filed previously *need not* be

refiled, but the filing party should, using the form ECF No. ____, cite to the docket location of the previously filed materials.” (Emphasis added.)

9. The parties also filed many of their supporting materials as omnibus electronic files containing groups of documents—for example, an affidavit with its attachments or an excerpt of a deposition transcript with exhibits used during the deposition. Although the parties ask to seal only a subset of the documents in these omnibus files, the entirety of each file must be placed provisionally under seal. This makes it difficult for the Court to review the documents at issue and to seal or unseal filed materials in a targeted way. It also hinders the public’s access to documents that would otherwise be publicly available.

10. When affidavits and depositions include attached exhibits, the Court’s preferred practice is for parties to file the affidavit or deposition excerpt and its supporting exhibits as separate documents, with each supporting exhibit separately filed as an attachment to the affidavit or deposition by designating the affidavit or deposition as a “lead document” in the Court’s e-filing system. *See Bradshaw v. Maiden Cap. Opportunity Fund, LP*, 2020 NCBC LEXIS 42, at *19–20 (N.C. Super. Ct. Apr. 7, 2020).

11. The Court further notes that the parties either failed to comply with the consultation requirements of BCR 5.2(b)(6) and 7.3, or failed to provide opposing counsel with sufficient time prior to filing to review the documents and determine whether they may be filed publicly. Of the 67 exhibits the parties initially sought to seal, they now agree that 29 of those may be filed publicly, as represented in e-mails

to the Court's law clerks dated 3 January and 31 January 2023. And had the parties filed just one copy of each exhibit for which they now seek sealed treatment, the motions to seal would encompass only 17 exhibits.

12. Next, the Court notes that a motion to seal must contain “a nonconfidential description of the document the movant is asking to be sealed.” BCR 5.2(b)(1). Should a party seek to have an entire document sealed, “the movant must file a notice that the entire document has been filed provisionally under seal,” and “[t]he notice must contain a nonconfidential description of the document.” BCR 5.2(f).

13. In their motions to seal, Harris and Ten Oaks do not provide nonconfidential descriptions of the documents they seek to seal. Instead, they simply refer to the exhibit numbers or Bates numbers of the relevant documents. Ten Oaks repeats this practice in its three notices of filing public versions of the sealed exhibits. (*See* ECF Nos. 54, 68, 69.) Such “generic description[s]” do not provide the Court with sufficient information “to assess whether the . . . information contained within the documents is of the type and quality that should be sealed,” *Potts v. KEL, LLC*, 2018 NCBC LEXIS 254, at *3–4 (N.C. Super. Ct. Oct. 19, 2018), nor do they provide the public with sufficient notice of what is being sealed. Future filings must describe provisionally sealed documents with more specificity so that the Court—and the public—can understand what the parties seek to seal.

14. In addition to describing what it seeks to seal, a party must file a public version of the provisionally sealed document in which “redactions and omissions [are] as limited as practicable.” BCR 5.2(f). “[T]he extent of sealing must be narrowly

tailored to protect the party's interest in secrecy while preserving, as much as possible, the public's interest in open courts. Sealing an entire document should be a rare circumstance." *Addison Whitney, LLC v. Cashion*, 2020 NCBC LEXIS 74, at *6 (N.C. Super. Ct. June 10, 2020) (citation and quotation marks omitted). If the movant is not the designating party, the movant must consult with the designating party regarding appropriate redactions sufficiently in advance of the 10-day deadline for filing a public version of the document. *See* BCR 5.2(f).

15. Here, Harris did not file public, redacted versions of any of the documents he filed under seal. Ten Oaks ostensibly filed "redacted" versions of the documents it filed under seal; however, the majority of these exhibits are entirely redacted. It is clear from the face of the documents, though, that most, if not all, of them contain a substantial amount of nonconfidential information.

16. The duplicative filings, overzealous redactions, and after-the-fact concessions that numerous documents should not be sealed have overly complicated the current record, wasted judicial resources, and delayed a ruling on the merits of the underlying motions for summary judgment. Going forward, the Court expects the parties to refrain from refileing previously filed documents, to tailor proposed redactions to truly confidential material, and to engage in meaningful consultation regarding the need to seal documents before making a motion.

C. Circumstances that Warrant Sealing

17. The presumption is that court filings are public records. They must be "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). For that reason, the burden is on the designating party to overcome that presumption. See BCR 5.1(c); *PDF Elec. & Supply Co., LLC v. Jacobsen*, 2020 NCBC LEXIS 80, at *4 (N.C. Super. Ct. July 8, 2020).

18. To meet this burden, the designating party must clearly articulate “the circumstances that warrant sealing the document” in the motion to seal, BCR 5.2(b)(2), or, if the designating party is not the moving party, in a supporting brief, see BCR 5.2(c), (e). “Cryptic or conclusory claims of confidentiality won’t do.” *Addison Whitney*, 2020 NCBC LEXIS 74, at *4. The designating party must explain how public “disclosure [of the document] would cause serious harm to [the] parties” or third parties to justify sealing. *Bradshaw*, 2020 NCBC LEXIS 42, at *10 (second alteration in original) (quoting *Lovell v. Chesson*, 2019 NCBC LEXIS 76, at *5 (N.C. Super. Ct. Oct. 28, 2019)).

19. In light of the repetitive filings, the Court will address the parties’ sealing requests by topic rather than by motion.

1. Bank Statements

20. Harris is the designating party for Exhibit 1 to Exhibit F, which consists of several bank statements for his checking account dated 5 July 2020 to 5 November 2020. (See ECF Nos. 50.7, 57.7, 62.6, 66.6.) In his motions to seal, Harris contends that sealing this exhibit in its entirety is proper because it “contains confidential communications and documents ([Harris’s] [b]anking information) that are not

otherwise publicly available, sensitive and personal information, and [Ten Oaks] business strategy” and “ideal investment criteria.” (ECF Nos. 52, 55, 58.)

21. The provisionally sealed version of this exhibit is already heavily redacted: the details of all but six transactions have been omitted. None of the unredacted information reveals “sensitive and personal information,” nor do *Harris’s* personal bank statements in any way reveal information about *Ten Oaks’s* “business strategy” or “ideal investment criteria.” Harris has not explained how public disclosure of six transactions that occurred over two years ago may result in harm. The Court will therefore deny Harris’s motions with respect to this filing.

2. Business Strategy

22. Ten Oaks asks to seal several exhibits that it contends “contain sensitive business and personal information . . . , including [its] business strategy, ideal investment criteria, and the personal email addresses of Matthew Magan and Michael Hahn,” as well as “a list of specific targets and the personal email of [a] business contact.” (ECF Nos. 48, 63.) Specifically, they include:

- The entirety of Exhibit 15 to Exhibit A to the Ten Oaks motion, (ECF No. 46.2), and Ten Oaks reply, (ECF No. 66.1); and those portions of Exhibit 16 to Exhibit A to the Ten Oaks motion, (ECF No. 46.2), Ten Oaks opposition, (ECF No. 62.1), and Ten Oaks reply, (ECF No. 66.1); Exhibit 17 to Exhibit A to the Ten Oaks motion, (ECF No. 46.2), and Ten Oaks reply, (ECF No. 66.1); and Exhibit 6 to Exhibit C to the Harris motion, (ECF No. 50.4), Harris opposition, (ECF No. 57.4), and Ten Oaks opposition, (ECF No. 62.3), that consist of a series of e-mails among various Ten Oaks employees dated 23 March to 14 April 2020.
- The entirety of Exhibit 35 to Exhibit A to the Ten Oaks motion, (ECF No. 46.2), which consists of a screenshot of text messages dated 24 August 2020.

- The entirety of Exhibit 4 to Exhibit H to the Ten Oaks motion, (ECF No. 46.9); Exhibit 4 to Exhibit I to the Ten Oaks opposition, (ECF No. 62.9); and Exhibit 2 to Exhibit I to the Ten Oaks motion, (ECF No. 46.10), and Ten Oaks opposition, (ECF No. 62.10), which consist of a series of e-mails among Harris, Ten Oaks employees Matthew Magan and Michael Hahn, and a nonparty dated 15 September 2020.

23. Ten Oaks hasn't carried its burden to show that any of this material should be sealed. It argues that unsealing these documents would result in public disclosure of "its unique strategy in identifying and pursuing opportunities for investment in corporate divestitures," thus compromising its competitive advantage. (ECF Nos. 48, 63.) This conclusory argument—one that does not, for example, identify the supposedly confidential material with any specificity or explain how Ten Oaks keeps it secret—is insufficient to show that Ten Oaks' interest in maintaining confidentiality outweighs the public's interest in open courts.

24. A review of the documents confirms that their contents contain no secrets and that public disclosure will not put Ten Oaks at serious risk of a competitive disadvantage. Many of the documents are e-mails between individuals at Ten Oaks and representatives of a tracking service based in India. In short, the e-mails show that Ten Oaks retained the tracking service for business development, primarily by having the service send a template message to individuals through LinkedIn and then tracking their responses. There is nothing confidential about the template messages, which appear to have been sent to hundreds of individuals with no expectation of confidentiality. Nor is there anything confidential in the routine reports from the tracking service.

25. Another document consists of a one-page screenshot of text messages between Harris and Magan. Harris asks whether Magan is available for a telephone call and then asks for Magan's general impressions of a target company, ScanSource Inc. Their discussion is far too general to be sensitive.

26. Also included in this set of documents is an e-mail exchange between Magan and a business acquaintance. In that exchange, the acquaintance questions Harris's level of experience. The substance of this exchange appears in Hahn's public affidavit, thus negating any potential secrecy. (*See Hahn Aff.* ¶ 13, ECF No. 46.9.) To the extent these e-mails refer to potential business targets, the discussion is superficial, and the information is over three years old and stale.

27. "Some showing of harm is essential." *Addison Whitney*, 2020 NCBC LEXIS 74, at *5. If any confidential business strategies are lurking within the mass of filings, it was incumbent upon Ten Oaks to identify it clearly for the Court's review. Here, Ten Oaks has not convincingly shown that any of these materials are truly confidential or that their disclosure would result in any harm to it.

28. The Court also declines to seal these documents simply because they include e-mail addresses. In this day and age, evidence often takes the form of e-mail communications. It is not this Court's practice to place those communications under seal as a matter of course. An e-mail address is not personal identifying information under N.C.G.S. § 132-1.10(d), and Ten Oaks has not cited any authority to the contrary.

29. Accordingly, the Court denies the motions to seal these documents.¹

3. Compromise Negotiations

30. Ten Oaks next seeks to seal several exhibits that discuss the terms of Harris's departure from Ten Oaks, (ECF No. 63), including the following:

- The entirety of Exhibit 40 to Exhibit A to the Harris motion, (ECF No. 50.2), and Harris opposition, (ECF No. 57.2); and Exhibit 15 to Exhibit C to the Harris motion, (ECF No. 50.4), Harris opposition, (ECF No. 57.4), Ten Oaks opposition, (ECF No. 62.3), and Ten Oaks reply, (ECF No. 66.3), which consist of a series of e-mails between Harris, Magan, and Hahn dated 24 September to 25 September 2020.
- Pages 265–68 of the deposition of Hahn dated 13 October 2022, filed as Exhibit B to the Ten Oaks opposition, (ECF No. 62.2).
- The entirety of Exhibit 34 to Exhibit B to the Harris motion, (ECF No. 50.3), Harris opposition, (ECF No. 57.3), and Ten Oaks opposition, (ECF No. 62.2); and Exhibit J to the Harris opposition, (ECF No. 57.11), which consist of a series of e-mails between Harris and Hahn dated 11 November to 12 November 2020.
- The entirety of Exhibit 37 to Exhibit B to the Harris motion, (ECF No. 50.3), Harris opposition, (ECF No. 57.3), and Ten Oaks opposition, (ECF No. 62.2); and Exhibit H to the Harris opposition, (ECF No. 57.9), which consist of a series of e-mails between Harris and Hahn dated 11 November to 13 November 2020.
- The entirety of Exhibit 38 to Exhibit B to the Harris motion, (ECF No. 50.3), Harris opposition, (ECF No. 57.3), and Ten Oaks

¹ It bears noting that some of these requests are also procedurally defective. First, Ten Oaks provisionally filed under seal Exhibits 15–17 to Exhibit A in support of its reply, (*see* ECF No. 66.1), without an accompanying motion to seal. But the filing of a motion to seal is not optional: “A person who seeks to have a document . . . sealed by the Court *must* file the document provisionally under seal *and* file a motion that asks the Court to seal the document.” BCR 5.2(a) (emphasis added). Second, Ten Oaks failed to file briefs in support of sealing Exhibit 6 to Exhibit C, which Harris twice filed provisionally under seal. (*See* ECF Nos. 50.4, 57.4.) As the designating party, Ten Oaks “bears the burden of establishing the need for sealing the document[s,]” BCR 5.1(c), and “[i]n the absence of a motion or brief that justifies sealing the document, the Court may order that the document . . . be made public,” BCR 5.2(e).

opposition, (ECF No. 62.2), which consists of a series of e-mails among Harris, Magan, and Hahn dated 13 November 2020.

31. Again, Ten Oaks hasn't carried its burden. Ten Oaks argues in conclusory fashion that information related to its compromise negotiations with Harris "could harm [Ten Oaks] if publicly available to others, including other contractors or [Ten Oaks] employees, who might seek to negotiate similar terms." (ECF No. 63.) This is entirely unpersuasive. The basic issue in this case is whether Harris was entitled to receive incentive compensation under his employment agreement at the time Ten Oaks fired him. The vast majority of these documents are e-mail communications that relate to that question. Given that the employment agreement itself is public, (*see* Harris Dep. Ex. 1, ECF No. 46.2), the Court can see no reason why the parties' discussions about the terms of that agreement and whether Harris would receive payment should be private. Moreover, Ten Oaks has not suggested that it engaged in these discussions with Harris, who had been fired, with any expectation that he would keep them confidential.

32. The Court therefore denies the motions to seal these documents.²

² The Court notes procedural defects that further support its decision. To begin, Ten Oaks did not file a motion to seal Exhibit 15 to Exhibit C to its reply brief. (ECF No. 66.3.) Nor did Ten Oaks file briefs in support of sealing several of the relevant exhibits when Harris filed them in support of his briefs. (*See* ECF Nos. 50.2–.4, 57.2–.4, 57.9, 57.11.) The Court further notes that three of the five excerpts from Hahn's deposition filed in conjunction with the briefing on the parties' motions for summary judgment include the four pages that Ten Oaks seeks to seal in its second motion to seal: Exhibit B to the Harris motion, (ECF No. 50.3), the Harris opposition, (ECF No. 57.3), and the Ten Oaks opposition, (ECF No. 62.2). But neither Harris nor Ten Oaks sought sealed treatment of these pages when they were filed in support of Harris's motion and opposition. (*See* ECF Nos. 52, 55, 58.)

4. Third-Party Documents

33. Ten Oaks additionally asks to seal three exhibits filed in support of its summary judgment motion: (i) the entirety of Exhibit 26 to Exhibit A, which consists of a series of e-mails between Harris, Magan, and a representative of nonparty ScanSource, Inc. dated 12 August to 21 August 2020 and a nondisclosure agreement template from ScanSource, (ECF No. 46.2); (ii) the entirety of Exhibit 36 to Exhibit A, which consists of talking points for an August 2020 meeting with ScanSource, (ECF No. 46.2); and (iii) the portion of Exhibit 10 to Exhibit C that consists of a draft letter of intent between Ten Oaks and ScanSource, (ECF No. 46.4).

34. Ten Oaks contends that the exhibits “contain confidential communications and documents from and relating to a third party, ScanSource.” In addition, “the documents relating to ScanSource are subject to confidentiality provisions in the nondisclosure agreement and letter of intent, and Ten Oaks . . . would be in breach . . . should the documents be disclosed.” (ECF No. 48.)

35. Reluctantly, the Court agrees to maintain under seal the nondisclosure agreement, the talking points, and the draft letter of intent. The contents of these documents are not truly relevant to the underlying motions for summary judgment, which reduces the public’s interest. In addition, the documents appear to contain information that nonparty ScanSource may consider confidential. By rule, Ten Oaks was required to seek ScanSource’s consent to file its confidential information publicly or, at a minimum, to file the information provisionally under seal, serve ScanSource with a copy of the motion to seal, and notify ScanSource of its right to file a supporting

brief. *See* BCR 5.2(b)(6), (7). It is unclear whether Ten Oaks consulted with ScanSource. Accordingly, given the minimal public interest and given the potential prejudice to ScanSource, the Court will maintain these documents under seal. If any party seeks to introduce these materials into evidence at trial, the Court will revisit the issue at that time.

36. The related correspondence in Exhibit 26 to Exhibit A, however, is relevant to the underlying motions, and the Court sees nothing sensitive or confidential in it. In fact, some of the e-mails redacted by Ten Oaks appear unredacted in other filings. (*Compare* ECF No. 46.2 (Exhibit 26 to Exhibit A), *with* ECF No. 54.1 (Exhibit 27 to Exhibit A).) Accordingly, the Court denies the request to seal Exhibit 26 to Exhibit A to Ten Oaks' summary judgment motion in its entirety and will require Ten Oaks to file a public version that does not redact the parties' correspondence.

5. Remaining Exhibits

37. The remaining exhibits consist of an iMessage log, filed as Exhibit 13 to Exhibit B to the Harris motion, (ECF No. 50.3), and Harris opposition, (ECF No. 57.3); ScanSource distribution schedules, filed as Exhibit 27 to Exhibit B to the Harris motion, (ECF No. 50.3), and Harris opposition, (ECF No. 57.3); and Harris's unexecuted separation agreement with Ten Oaks, filed as Exhibit 35 to Exhibit B to the Harris motion, (ECF No. 50.3), and Harris opposition, (ECF No. 57.3).

38. In his motions to seal, Harris represents that Ten Oaks designated these exhibits as confidential under the protective order, (*see* ECF Nos. 52, 55, 58), so it was incumbent on Ten Oaks to demonstrate the need for sealing these documents. But

Ten Oaks did not file a brief in support. In addition, the documents appear to be similar in nature to others that the Court has deemed undeserving of sealed treatment above. The Court will therefore unseal these documents. *See* BCR 5.2(e) (“In the absence of a motion or brief that justifies sealing the document, the Court may order that the document (or part of the document) be made public.”).

D. Conclusion

39. Therefore, in the exercise of its discretion, the Court **ORDERS** as follows:

- a. The Court **GRANTS in part** Ten Oaks’ 22 December 2022 motion to seal as to Exhibits 26 and 36 to Exhibit A, (ECF No. 46.2), and Exhibit 10 to Exhibit C, (ECF No. 46.4), to Ten Oaks’ motion for summary judgment, which shall remain under seal pending further order. The Court otherwise **DENIES** Ten Oaks’ 22 December 2022 motion to seal and hereby **ORDERS** that the Mecklenburg County Clerk of Superior Court shall unseal all other exhibits filed in support of Ten Oaks’ motion for summary judgment within ten days of the entry of this Order.
- b. The Court **DENIES** the other four motions to seal in their entirety and hereby **ORDERS** that the Mecklenburg County Clerk of Superior Court shall unseal the following documents within ten days of the entry of this Order:
 - (1) Harris’s motion for summary judgment, supporting brief, and all supporting exhibits;

- (2) All exhibits filed in support of Harris's brief in opposition to Ten Oaks' summary judgment motion;
 - (3) All exhibits filed in support of Ten Oaks' brief in opposition to Harris's summary judgment motion; and
 - (4) All exhibits filed in support of Ten Oaks' reply in support of its motion for summary judgment.
- c. Ten Oaks shall have through and including 10 August 2023 to file a revised public, redacted version of Exhibit 26 to Exhibit A to Ten Oaks' motion for summary judgment that redacts only the nondisclosure agreement with ScanSource.

SO ORDERED, this the 31st day of July, 2023.

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