

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23CV040918-590

ATLANTIC COAST CONFERENCE,

Plaintiff,

v.

BOARD OF TRUSTEES OF
FLORIDA STATE UNIVERSITY,

Defendant.

**ORDER AND OPINION
ON MOTIONS TO SEAL**

1. **THIS MATTER** is before the Court upon Plaintiff Atlantic Coast Conference's (the "ACC") Amended Motion to Seal,¹ the parties' Joint Consent Motion to Provisionally Seal ECF No. 19.1 (the "Joint Motion to Seal"),² and the ACC's Motion to Seal Summary Exhibit (the "Second Motion to Seal")³ (collectively, the "Motions to Seal"), in the above-captioned case.

2. Having considered the Motions to Seal, the parties' briefs in support of and in opposition to the Motions to Seal, the appropriate evidence of record on the Motions to Seal, and the arguments of counsel at the hearing on the Motions to Seal, the Court, in the exercise of its discretion and for the reasons set forth below, hereby **GRANTS in part** and **DENIES in part** the ACC's Amended Motion to Seal, **GRANTS** the

¹ (Pl.'s Am. Mot. Seal, ECF No. 9.)

² (Joint Consent Mot. Provisionally Seal ECF No. 19.1 [hereinafter "Joint Mot. Seal"], ECF No. 22.)

³ (Pl.'s Mot. Seal Summ. Ex., ECF No. 25.)

Joint Motion to Seal, and **GRANTS in part** and **DENIES in part** the ACC's Second Motion to Seal.

Womble Bond Dickinson (US) LLP, by James P. Cooney, III, Sarah Motley Stone, and Patrick Grayson Spaugh, and Lawson Huck Gonzalez, PLLC, by Charles Alan Lawson, for Plaintiff Atlantic Coast Conference.

Bradley Arant Boult Cummings LLP, by Christopher C. Lam, C. Bailey King, Jr., Hanna E. Eickmeier, and Brian M. Rowson, and Greenberg Traurig, P.A., by David C. Ashburn, John K. Londot, and Peter G. Rush, for Defendant Board of Trustees of Florida State University.

Moore & Van Allen, by James P. McLoughlin, Jr., and Cravath, Swaine & Moore LLP, by J. Wesley Earnhardt and David H. Korn, for Non-Party ESPN, Inc.

Bledsoe, Chief Judge.

I.

PROCEDURAL HISTORY

3. On 21 December 2023, the ACC provisionally filed under seal its Complaint for Declaratory Judgment (the “Complaint”) and nine supporting exhibits.⁴ That same day, the ACC filed a Motion to Seal its Complaint and three of the supporting exhibits.⁵ The ACC also filed (i) a public, redacted version of its Complaint; (ii) public, unredacted versions of Exhibits 1, 2, 4, and 7–9; and (iii) cover pages stating that Exhibits 3, 5, and 6 were filed under seal.⁶

⁴ (Compl. Declaratory J. [hereinafter “Compl.”], ECF No. 2 (sealed).)

⁵ (Pl.’s Mot. Seal, ECF No. 5.)

⁶ (Compl., ECF No. 3 (public redacted).)

4. On 17 January 2024, the ACC provisionally filed under seal its First Amended Complaint (the “FAC”) and the FAC’s sixteen supporting exhibits.⁷ The Amended Motion to Seal⁸ and a Memorandum in Support of Amended Motion to Seal (the “ACC’s Brief in Support”)⁹ accompanied these filings. The ACC also filed (i) public, redacted versions of the FAC¹⁰ and Exhibits 8, 9, 12, and 14;¹¹ (ii) public, unredacted versions of Exhibits 1, 2, 4, 7, 10, 11, 13, and 15;¹² and (iii) provisionally sealed versions of Exhibits 3, 5, 6, and 16.¹³ On 1 February 2024, Defendant Board of Trustees of Florida State University (the “FSU Board”) filed a Brief in Opposition to the Amended Motion to Seal (the “FSU Board’s Opposition Brief”).¹⁴

5. Having reviewed the Amended Motion to Seal, the ACC’s Brief in Support, and the FSU Board’s Opposition Brief, the Court entered an Interim Order on Amended Motion to Seal (the “Interim Order”) on 1 February 2024, directing the

⁷ (First Am. Compl. [hereinafter “FAC”], ECF No. 11 (sealed).)

⁸ (Pl.’s Am. Mot. Seal.)

⁹ (Pl.’s Mem. Supp. Pl.’s Am. Mot. Seal [hereinafter “Br. Supp. Pl.’s Am. Mot. Seal”], ECF No. 10.)

¹⁰ (FAC, ECF No. 12 (public redacted).)

¹¹ (FAC Exs. 8, 9, 12, 14, ECF Nos. 12.8 (public redacted), 12.9 (public redacted), 12.12 (public redacted), 12.14 (public redacted).)

¹² (FAC Exs. 1, 2, 4, 7, 10, 11, 13, 15, ECF Nos. 12.1 (public unredacted), 12.2 (public unredacted), 12.4 (public unredacted), 12.7 (public unredacted), 12.10 (public unredacted), 12.11 (public unredacted), 12.13 (public unredacted), 12.15 (public unredacted).)

¹³ (FAC Exs. 3, 5, 6, 16, ECF Nos. 12.3 (sealed), 12.5 (sealed), 12.6 (sealed), 12.16 (sealed).)

¹⁴ (Def.’s Br. Opp’n Pl.’s Am. Mot. Seal, ECF No. 15.)

ACC, if it had not already done so, to serve a copy of its Amended Motion to Seal on third parties ESPN, Inc. and ESPN Enterprises, Inc. (together, “ESPN”) and notify ESPN of its right to file a supporting brief under Business Court Rule (“BCR”) 5.2(c).¹⁵ The Interim Order also directed the ACC to file a certificate of service of the same on the Court’s electronic docket and permitted ESPN to file a brief in support of the Amended Motion to Seal.¹⁶ Four days later, the Court entered a Scheduling Order in which it set deadlines for the ACC to file a reply in support of its Amended Motion to Seal and for the ACC and the FSU Board to respond, should they so choose, to any brief in support of the Amended Motion to Seal filed by ESPN.¹⁷

6. On 5 February 2024, the ACC filed its Certificate of Service¹⁸ and, one week later, filed its Reply in Support of Amended Motion to Seal (the “ACC’s Reply”)¹⁹ with two supporting exhibits.²⁰ The ACC sought to seal one of those exhibits in the accompanying Second Motion to Seal.²¹ ESPN filed its Memorandum of Law in Support of Amended Motion to Seal (the “ESPN’s Brief in Support”)²² with three

¹⁵ (See Interim Order Pl.’s Am. Mot. Seal ¶¶ 8(a), (b), ECF No. 16.)

¹⁶ (See Interim Order Pl.’s Am. Mot. Seal ¶¶ 8(a), (b).)

¹⁷ (See Scheduling Order ¶¶ 6(a), (b), ECF No. 18.)

¹⁸ (Certificate Serv., ECF No. 17.)

¹⁹ (Reply Supp. Pl.’s Am. Mot. Seal, ECF No. 24.)

²⁰ (Reply Supp. Pl.’s Am. Mot. Seal Exs. A, B, ECF Nos. 24.1, 24.2 (sealed).)

²¹ (See Pl.’s Mot. Seal Summ. Ex. at 1.)

²² (ESPN’s Mem. Law Supp. Pl.’s Am. Mot. Seal [hereinafter “ESPN’s Br. Supp.”], ECF No. 29.)

supporting exhibits²³ on 22 February 2024. Eleven days later, the ACC filed its Reply to ESPN's Brief in Support²⁴ with two supporting exhibits,²⁵ and the FSU Board filed its Reply to ESPN's Brief in Support²⁶ with a single supporting exhibit.²⁷

7. During this same period, the FSU Board filed its Motion to Dismiss or, in the Alternative, Stay the Action (the "Motion to Dismiss"),²⁸ a supporting brief,²⁹ and two supporting exhibits³⁰ on 7 February 2024. Exhibit 1 to the Motion to Dismiss was filed provisionally under seal and, two days later, the parties filed the Joint Motion to Seal this exhibit.³¹ On 12 February 2024, the Court entered an Order on Joint Motion to Seal, directing that Exhibit 1 to the Motion to Dismiss remain under seal pending the Court's determination of the ACC's Amended Motion to Seal.³² The FSU Board filed a public, redacted version of Exhibit 1 on 20 February 2024.³³

²³ (ESPN's Br. Supp. Exs. A–C, ECF Nos. 29.1–3.)

²⁴ (Pl.'s Reply ESPN's Br. Supp., ECF No. 32.)

²⁵ (Pl.'s Reply ESPN's Br. Supp. Exs. A–B, ECF Nos. 32.1, .2.)

²⁶ (Def.'s Reply ESPN's Br. Supp., ECF No. 37.)

²⁷ (Def.'s Reply ESPN's Br. Supp. Ex. 1, ECF No. 37.1.)

²⁸ (Def.'s Mot. Dismiss or, in the Alt., Stay Action [hereinafter "Def.'s Mots."], ECF No. 19.)

²⁹ (Def.'s Br. Supp. Def.'s Mots., ECF No. 20.)

³⁰ (Def.'s Mots. Exs. 1, 2, ECF Nos. 19.1 (sealed), 19.2.)

³¹ (See Joint Mot. Seal 1.)

³² (See Order Joint Mot. Seal, ECF No. 26.)

³³ (See Def.'s Mots. Ex. 1, ECF No. 28 (public redacted).)

8. The Court held a hearing on the Motions to Seal on 22 March 2024 at which all parties were represented by counsel (the “Hearing”).³⁴ The Motions to Seal are now ripe for resolution.

II.

LEGAL STANDARD

9. 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).

10. BCR 5 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. “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 PDF Elec. & Supply Co. v. Jacobsen*, 2020 NCBC LEXIS 80, at *4 (N.C. Super. Ct. July 8, 2020). To meet this burden, the designating party must clearly articulate “the circumstances that warrant sealing the document.” BCR 5.2(b)(2).

³⁴ The Court also heard arguments at the Hearing on the FSU Board’s Motion to Dismiss. (ECF No. 19.) The Court resolved this motion by separate order on 4 April 2024. (*See Order and Op. Def.’s Mots.*, ECF No. 56.)

“Cryptic or conclusory claims of confidentiality won’t do.” *Addison Whitney, LLC v. Cashion*, 2020 NCBC LEXIS 74, at *4 (N.C. Super. Ct. June 10, 2020). Instead, 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 v. Maiden Cap. Opportunity Fund, LP*, 2020 NCBC LEXIS 42, at *10 (N.C. Super. Ct. Apr. 7, 2020) (second alteration in original) (quoting *Lovell v. Chesson*, 2019 NCBC LEXIS 76, at *5 (N.C. Super. Ct. Oct. 28, 2019)). The moving party must also file either a public version of a provisionally sealed document in which “redactions and omissions [are] as limited as practicable” or a notice of filing the document under seal that contains a nonconfidential description of the document. BCR 5.2(f).

III.

ANALYSIS

11. The ACC seeks to seal excerpts of the following three agreements to which the ACC and ESPN are parties: (i) the Second Amendment to the Multi-Media Agreement, filed as Exhibit 3 to the Complaint³⁵ and the FAC;³⁶ (ii) the Amended and Restated ACC-ESPN Multi-Media Agreement, filed as Exhibit 5 to the Complaint³⁷ and the FAC;³⁸ and (iii) the ACC-ESPN Network Agreement, filed as Exhibit 6 to the

³⁵ (Compl. Ex. 3.)

³⁶ (FAC Ex. 3.)

³⁷ (Compl. Ex. 5.)

³⁸ (FAC Ex. 5.)

Complaint³⁹ and the FAC⁴⁰ (collectively, the “Agreements”).⁴¹ The ACC also seeks to seal those portions of the following documents that quote from or reference the Agreements: (i) the Complaint;⁴² (ii) the FAC;⁴³ (iii) a corresponding summary chart, filed as Exhibit B to the ACC’s Reply;⁴⁴ (iv) the complaint filed in related litigation in Florida (the “Florida Action”), filed as Exhibit 16 to the FAC;⁴⁵ and (v) the first amended complaint filed in the Florida Action, filed as Exhibit 1 to the FSU Board’s Motion to Dismiss (the “Florida FAC”).⁴⁶

12. The FSU Board opposes sealing on several grounds. First, the FSU Board argues that “because the ACC has shared . . . the terms of the . . . Agreements with its members,” nine of which are public universities, “the Agreements necessarily constitute public records and, as a result, cannot be sealed by this Court.”⁴⁷ The FSU Board further contends that the Agreements do not qualify for the trade secret

³⁹ (Compl. Ex. 6.)

⁴⁰ (FAC Ex. 6.)

⁴¹ (See Pl.’s Am. Mot. Seal 1.)

⁴² (Compl.)

⁴³ (FAC.)

⁴⁴ (Reply Supp. Pl.’s Am. Mot. Seal Ex. B.)

⁴⁵ (FAC Ex. 16.)

⁴⁶ (Def.’s Mots. Ex. 1; see Pl.’s Am. Mot. Seal 1; Joint Mot. Seal 1; Pl.’s Mot. Seal Summ. Ex. at 1.)

⁴⁷ (Def.’s Br. Opp’n Pl.’s Am. Mot. Seal 6; see Def.’s Reply ESPN’s Br. Supp. 2–13.)

exemption under either North Carolina’s or Florida’s public record laws.⁴⁸ Second, the FSU Board argues that the ACC seeks to seal information that is already public. The FSU Board asserts that the Agreements have been the subject of news articles for years and that the pleadings in the Florida Action have been publicly available since 22 December 2023 without any effort by the ACC or ESPN to seal them.⁴⁹ Last, the FSU Board contends that the ACC’s proposed redactions are overbroad and inconsistent.⁵⁰

13. The ACC and ESPN oppose the FSU Board’s arguments. First, they contend that the Agreements are not subject to North Carolina’s and/or Florida’s public record laws, but should the Court conclude that they are, they qualify for the trade secret exemption under those laws.⁵¹ Next, the ACC and ESPN assert that despite the confidentiality provisions in the Agreements, the FSU Board disclosed confidential terms from the Agreements when the FSU Board publicly filed its original complaint and the Florida FAC in the Florida Action.⁵² As a result, the ACC contends that the FSU Board improperly “seeks to have this Court adjudicate the merits of the [ACC]’s claim for breach of confidentiality through a finding that there was not (and could not

⁴⁸ (See Def.’s Br. Opp’n Pl.’s Am. Mot. Seal 9–10; Def.’s Reply ESPN’s Br. Supp. 4–11.)

⁴⁹ (See Def.’s Br. Opp’n Pl.’s Am. Mot. Seal 10–15; Def.’s Reply ESPN’s Br. Supp. 7–8, 10–11.)

⁵⁰ (See Def.’s Br. Opp’n Pl.’s Am. Mot. Seal 12–14.)

⁵¹ (See Reply Supp. Pl.’s Am. Mot. Seal 6–11; ESPN’s Br. Supp. 9–13; Pl.’s Reply ESPN’s Br. Supp. 6–12.)

⁵² (See Br. Supp. Pl.’s Am. Mot. Seal 1–2; Reply Supp. Pl.’s Am. Mot. Seal 5; ESPN’s Br. Supp. 10; Pl.’s Reply ESPN’s Br. Supp. 1–2.)

be) any agreement to abide by the confidentiality provisions of the ESPN Agreements.”⁵³ Last, the ACC and ESPN argue, and counsel for the FSU Board conceded at the Hearing, that no court has ever declined to seal these or similar agreements between athletic conferences and media companies in other litigation and the Court finds no circumstances here that should compel this Court to be the first to do so.⁵⁴

14. As an initial matter, the Court agrees with the ACC that “a decision on th[e] Motion[s to Seal] is limited to whether the interest of the [ACC] in protecting its confidential and proprietary business information in the [provisionally sealed filings] outweighs the qualified right of the public to [access] civil proceedings.”⁵⁵ Although the parties argued at length in their briefing and at the Hearing about the applicability of the Florida and/or North Carolina public records laws to the documents the ACC seeks to seal, these arguments are not suited for determination on a motion to seal, particularly when, as discussed below, they seek to resolve the merits of the ACC’s fourth cause of action alleging that the FSU Board breached its confidentiality obligations to the ACC. The Court therefore declines to consider the parties’ arguments concerning the Florida and North Carolina public records laws’ application to documents filed in this case in the current procedural context.

⁵³ (Reply Supp. Pl.’s Am. Mot. Seal 11; *see* Pl.’s Reply ESPN’s Br. Supp. 1–2.)

⁵⁴ (*See* Br. Supp. Pl.’s Am. Mot. Seal 4–5; Reply Supp. Pl.’s Am. Mot. Seal 4; ESPN’s Br. Supp. 7–9.)

⁵⁵ (Reply Supp. Pl.’s Am. Mot. Seal 2.)

15. Turning then to the Motions to Seal, the ACC specifically seeks to seal historical and prospective financial data and other material terms of the Agreements.⁵⁶ According to the ACC, the Agreements are “the most sensitive, proprietary, and commercially material agreements to which the ACC is a party[,]” and public disclosure of this information would have a negative impact on “future negotiations of the ACC’s television rights agreements” and “the ACC’s relationships with its television partners if they were unable to rely on the ACC maintaining the confidentiality of the agreements.”⁵⁷ The ACC also argues that disclosure would “harm the ACC’s ability to compete with other conferences by allowing them to use the information as leverage in negotiations,” thus gaining an “unfair advantage.”⁵⁸

16. ESPN, a non-party, also seeks to seal the terms of the Agreements. ESPN contends that its “live broadcasts are made possible, and are governed by, highly sensitive agreements between ESPN and the leagues and organizations that own the [media] rights” and that “ESPN competes vigorously with other sports networks for those media rights[.]”⁵⁹ ESPN asserts that the Agreements are “textbook trade secrets[.]” and argues that public disclosure “would be destabilizing and harmful: competing networks would gain a leg up on ESPN in the next round of negotiations with rightsholders, and all other rightsholders negotiating with ESPN would

⁵⁶ (See Br. Supp. Pl.’s Am. Mot. Seal 3–6; Reply Supp. Pl.’s Am. Mot. Seal 12–13.)

⁵⁷ (Br. Supp. Pl.’s Am. Mot. Seal 3 (quoting Br. Supp. Pl.’s Am. Mot. Seal Ex. 1 ¶ 7).)

⁵⁸ (Pl.’s Reply ESPN’s Br. Supp. 3.)

⁵⁹ (ESPN’s Br. Supp. 1.)

capitalize on the knowledge of what specific terms ESPN has agreed to with—or has not acquired from—others.”⁶⁰ ESPN emphasizes that its ability to “negotiate favorable terms with television content providers” and “compete with other television networks for content rights depends in significant part on ESPN’s ability to maintain the secrecy of its various media rights agreements[.]”⁶¹

17. It is important to note that “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” or third parties. *Bradshaw*, 2020 NCBC LEXIS 42, at *10 (alterations in original) (quoting *Lovell*, 2019 NCBC LEXIS 76, at *5). “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 v. Doe*, 263 N.C. App. 68, 91–92 (2018) (quoting *Co. Doe v. Pub. Citizen*, 749 F.3d 246, 269 (2014)).

18. After careful and thorough review, the Court concludes that partial sealing as requested by the ACC and ESPN is appropriate for several reasons. First, financial information, pricing terms, and internal business strategies are included within the categories that North Carolina courts have treated as confidential and proprietary trade secrets that may warrant protection. *See, e.g., GE Betz, Inc. v. Conrad*, 231 N.C. App. 214, 234 (2013) (holding “pricing information, customer proposals, historical costs, and sales data” may constitute trade secrets); *Sunbelt*

⁶⁰ (ESPN’s Br. Supp. 1.)

⁶¹ (ESPN’s Br. Supp. 3.)

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 the business” may constitute trade secrets); *Lowder Constr., Inc. v. Phillips*, 2019 NCBC LEXIS 117, at *19 (N.C. Super. Ct. Dec. 30, 2019) (holding that “cost histories, bid and pricing policies, operating margins and profits, sales and marketing strategies, vendor pricing and relationship histories, and other confidential business information” as a compilation may constitute a trade secret).

19. Second, the ACC and ESPN contend that the terms of the Agreements, which serve as the basis for the ACC’s lawsuit against the FSU Board,⁶² are trade secrets.⁶³ Under Chapter 66, “a court shall protect an alleged trade secret by reasonable steps which may include . . . sealing the records of the action subject to further court order[.]” N.C.G.S. § 66-156. In addition, the ACC alleges that the FSU Board has breached its obligation to protect the confidentiality of the very Agreements for which the ACC now seeks sealed treatment.⁶⁴ Although “[i]nformation for which a claimant asserts trade secret protection can lose the benefit of protection if it has been disclosed, publicly released, or publicly filed during litigation[.]” *Roundpoint Mortg. Co. v. Florez*, 2016 NCBC LEXIS 18, at *39 (N.C. Super. Ct. Feb. 18, 2016), the Court concludes that the FSU Board’s alleged improper

⁶² (See generally FAC.)

⁶³ (See Reply Supp. Pl.’s Am. Mot. Seal 7–11; ESPN’s Br. Supp. 4–9; Pl.’s Reply ESPN’s Br. Supp. 6–7.)

⁶⁴ (See FAC ¶¶ 213–31.)

disclosure of the terms of the Agreements in the Florida Action should not control whether sealing is appropriate in this litigation, and the Court declines to determine the merits of the ACC's fourth cause of action through a motion to seal.

20. Third, numerous other courts, when considering requests to seal these and similar agreements, have concluded that they constitute trade secrets that warrant sealing. *See, e.g., In re NCAA Athletic Grant-in-Aid Cap Antitrust Litig.*, No. 4:14-md-02541-CW, Non-Parties/Intervenors Fox Netws.'s Opp'n Pls.' Mot. Compel Re Fin. Docs., Broad., Media, and Sponsorship Conts., and Mktg. Docs. (N.D. Cal. July 18, 2016); *In re NCAA Athletic Grant-in-Aid Cap Antitrust Litig.*, No. 4:14-md-02541-CW, Non-Party CBS Broad. Inc.'s Opp'n Pls.' Mot. Compel Re Fin. Docs., Broad., Media, and Sponsorship Conts., and Mktg. Docs. (N.D. Cal. July 8, 2016); *In re NCAA Athletic Grant-in-Aid Cap Antitrust Litig.*, No. 4:14-md-02541-CW, Stipulation and Order Regarding Second Addendum to Stipulated Protective Order (N.D. Cal. Oct. 12, 2016); *Bannon v. NCAA*, No. C 09-3329 CW, Order Approving Stipulation; Granting in Part Mot. Seal; Denying as Moot Mot. Intervene (N.D. Cal. June 17, 2014); *In re NCAA Student-Athlete Name and Likeness Licensing Litig.*, No. 11-MC-63, Mem. Op. and Order (M.D.N.C. June 18, 2012). While not controlling, the Court finds these decisions persuasive.

21. Fourth, the privacy interests of non-party ESPN deserve special consideration and weigh in favor of sealing. *See, e.g., Golden Triangle #3, LLC v. RMP-Mallard Pointe, LLC*, 2021 NCBC LEXIS 118, *8 (N.C. Super. Ct. Apr. 12, 2021) (recognizing that "special consideration should be given to the privacy interests of

non-parties” on sealing motions); *United States v. Kravetz*, 706 F.3d 47, 62 (2d Cir. 2013) (“Third-party privacy interests, in particular, have been referred to as a venerable common law exception to the presumption of access and weigh heavily in a court’s balancing equation[.]”) (cleaned up)). ESPN has offered evidence that “[o]ne of ESPN’s fundamental business functions is to negotiate media agreements with athletic conferences and other producers of athletic performances on as favorable terms as possible[.]” and the Court agrees with ESPN that “the trade secrets and highly sensitive commercial information contained in its agreements [should] not become collateral damage in th[is] lawsuit.”⁶⁵

22. The Court therefore concludes that sealing the excerpts of the Agreements and those portions of the pleadings in this action and the Florida Action that quote from or refer to the Agreements is appropriate.

23. Nevertheless, the Court agrees with the FSU Board that certain of the ACC’s redactions are “arbitrary, inconsistent, and overbroad[.]”⁶⁶ For example, in the Complaint and the FAC, the ACC inconsistently redacts general descriptions of the amounts previously received by FSU under the Agreements at issue in this litigation.⁶⁷ Similarly, redactions of the terms “Grant of Rights Fee(s)/Payments” and

⁶⁵ (ESPN’s Br. Supp. 2, 7; ESPN’s Br. Supp. Ex. A ¶¶ 4–14.)

⁶⁶ (Def.’s Br. Opp’n Pl.’s Am. Mot. Seal 12–14.)

⁶⁷ (*Compare* Compl. ¶ 64, *and* FAC ¶ 73, *with* Compl. Summary of Claims ¶¶ 3, 4, *and* FAC Summary of Claims ¶ 5.)

“Rights Fee(s)” are applied inconsistently throughout the Complaint and the FAC.⁶⁸ The Court will therefore direct the ACC to file revised public versions of the relevant filings that do not redact these terms since they have been publicly disclosed in the ACC’s own pleadings.

IV.

CONCLUSION

24. **WHEREFORE**, based on the above, the Court, in the exercise of its discretion, hereby **ORDERS** as follows:

a. The Court **GRANTS in part** and **DENIES in part** the ACC’s Amended Motion to Seal as follows:

i. The Court **GRANTS** the ACC’s Amended Motion to Seal as to (i) Exhibits 3, 5, and 6 to the Complaint, and (ii) Exhibits 3, 5, 6, and 16 to the FAC. These exhibits shall remain under seal pending further order of the Court. Exhibits 3, 5, and 6 to the Complaint and the FAC shall be accessible only to the Court and counsel of record.

ii. The Court **DENIES** the ACC’s Amended Motion to Seal as to (i) the monetary amount in paragraph 64 of the Complaint and paragraph 73 of the FAC; and (ii) the terms “Grant of Rights Fee(s)/Payments” and “Rights Fee(s)” in the first paragraph of the Summary of Claims and paragraphs 14, 41, 42, and 69 of the

⁶⁸ (Compare Compl. Summary of Claims ¶ 1, ¶¶ 14, 41, 42, 69, and FAC Summary of Claims ¶ 1, ¶¶ 14, 43, 44, 70, 73, 78, 110, with Compl. ¶¶ 61, 64, 87, 129, and FAC ¶ 186.)

Complaint, and in the first paragraph of the Summary of Claims and paragraphs 14, 43, 44, 70, 73, 78, and 110 of the FAC. The Court otherwise **GRANTS** the ACC's Amended Motion to Seal as to the Complaint and the FAC. These documents shall remain under seal pending further order of the Court and shall be accessible only to the Court and counsel of record.

- iii. The ACC shall have through and including 15 April 2024 to file revised public, redacted versions of the Complaint and the FAC that contain the more limited redactions identified in the preceding subparagraph.
- b. The Court **GRANTS** the Joint Motion to Seal as to Exhibit 1 to the FSU Board's Motion to Dismiss, which shall remain under seal pending further order of the Court.
- c. The Court **GRANTS in part** and **DENIES in part** the ACC's Second Motion to Seal as follows:
 - i. The Court **DENIES** the ACC's Second Motion to Seal as to (i) the monetary amount in paragraph 64 of the Complaint and paragraph 73 of the FAC; and (ii) the terms "Grant of Rights Fee(s)/Payments" and "Rights Fee(s)" in the first paragraph of the Summary of Claims and paragraphs 14, 41, 42, and 69 of the Complaint, and in the first paragraph of the Summary of Claims and paragraphs 14, 43, 44, 70, 73, 78, and 110, of the FAC listed

in Exhibit B to the ACC's Reply. The Court otherwise **GRANTS** the ACC's Second Motion to Seal. Exhibit B to the ACC's Reply shall remain under seal pending further order of the Court and shall only be accessible to the Court and counsel of record.

- ii. The ACC shall have through and including 15 April 2024 to file a public, redacted version of Exhibit B to the ACC's Reply that contains the redactions identified in the preceding subparagraph.

SO ORDERED, this the 5th day of April, 2024.

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