

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CV029650-590

PATRICK WHALEN, individually,
and CU SOBE, LLC,

Plaintiffs,

v.

MICHAEL M. TUTTLE,

Defendant.

**ORDER ON
MOTIONS TO SEAL**

1. Pending are two related motions to seal, one filed by Defendant Michael Tuttle and the other by Plaintiffs Patrick Whalen and CU SOBE, LLC. (*See* ECF Nos. 13, 21.) The Court elects to decide the motions on the briefs. *See* BCR 7.4.

2. By way of background, Whalen, Tuttle, and a few other individuals co-own several restaurant businesses, including CU SOBE. For well over a year, Whalen and Tuttle have clashed about fiscal, managerial, and operational matters. In April 2024, they mediated their disputes and signed a written settlement agreement. But the peace was short-lived. In this action, Whalen and CU SOBE accuse Tuttle of a range of misconduct, including breach of the settlement agreement. (*See generally* Compl., ECF No. 3.)

3. In lieu of answering, Tuttle moved to dismiss the complaint, attaching the settlement agreement as an exhibit. (*See* Def.'s Ex. A, ECF No. 10.1.) He then moved to seal the agreement and the parts of his opening brief that discuss it. (*See* Def.'s Mot. Seal, ECF No. 13.) Later, Whalen and CU SOBE also moved to seal the parts

of their opposition brief that discuss the agreement. (*See* Pls.’ Mot. Seal, ECF No. 21.)

4. The only basis that either side offered to support sealing the agreement (and the related briefing) is that it contains a confidentiality clause. By itself, though, the confidentiality clause is not a sufficient reason to place the settlement agreement under seal. Court filings in North Carolina are generally “open to the inspection of the public,” except as prohibited by law. N.C.G.S. § 7A-109(a). “Evidence otherwise appropriate for open court may not be sealed merely because an agreement is involved that purports to render the contents of that agreement confidential.” *France v. France*, 209 N.C. App. 406, 415–16 (2011). To be sure, courts do sometimes place contract terms under seal. But the reason for doing so is not merely “because the parties have agreed to keep them confidential”; it is “instead because their disclosure would cause serious harm to one or both parties.” *Lovell v. Chesson*, 2019 NCBC LEXIS 76, at *5 (N.C. Super. Ct. Oct. 28, 2019).

5. Rather than deny the motions to seal, though, the Court gave the parties a second chance. In an interim order, the Court invited the parties to highlight the truly sensitive parts of their agreement, if any, and to specify the harm that public disclosure would cause. (*See* Interim Order, ECF No. 23.)

6. Tuttle declined this invitation. In an e-mail to the Court and all counsel of record, he reported that he did “not intend to file a supplemental brief and [would] instead defer to the Court’s decision” on the motions.

7. Whalen and CU SOBE, on the other hand, did file a supplemental brief in support of the motions to seal. (See ECF No. 24.) In it, they contend that the settlement agreement should remain under seal or, if made public, redacted to avoid disclosure of the settlement amount, the payment schedule, and one reference to the percentage of Whalen's ownership interest in a certain limited liability company. But they concede that the briefing related to the motion to dismiss does not contain any truly sensitive information that would result in serious harm if made publicly available.

8. It bears repeating that this Court does not seal court filings as a matter of course. This is a public forum. Judicial decisions, and the documents on which they are based, ought to be open to public inspection "in all but unusual circumstances." *Addison Whitney, LLC v. Cashion*, 2020 NCBC LEXIS 74, at *3–4 (N.C. Super. Ct. June 10, 2020); *see also Potts v. KEL, LLC*, 2018 NCBC LEXIS 254, at *2 (N.C. Super. Ct. Oct. 19, 2018) ("[C]ourts should conceal records sparingly and only in the interest of the proper and fair administration of justice." (citation and quotation marks omitted)).

9. Here, the presumption in favor of public access is strong. This is so because the settlement agreement is the subject of the lead claim for relief in the complaint, making it central to the adjudication of the case. *See, e.g., Harris v. Ten Oaks Mgmt., LLC*, 2023 NCBC LEXIS 91, at *13–14 (N.C. Super. Ct. July 31, 2023) (stressing documents' relationship to "[t]he basic issue in this case"); *see also Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 121 (2d Cir. 2006) ("[W]here documents are

used to determine litigants' substantive legal rights, a strong presumption of access attaches."); *Baxter Int'l, Inc. v. Abbott Labs.*, 297 F.3d 544, 545 (7th Cir. 2002) ("[T]hose documents . . . that influence or underpin the judicial decision are open to public inspection unless they meet the definition of trade secrets or other categories of bona fide long-term confidentiality.").

10. By contrast, the parties' countervailing interest in maintaining the confidentiality of the settlement agreement is weak. Indeed, "now that the parties have submitted disputes about" the settlement agreement "for judicial resolution, their earlier agreement to keep their affairs confidential is not, without more, a sound reason to seal court filings." *Lovell*, 2019 NCBC LEXIS 76, at *6. Tuttle has not identified any other interest, much less a substantial interest, in keeping the agreement confidential. And Whalen and CU SOBE's vague assertions that revealing the settlement amount and Whalen's ownership stake might lead to competitive harm are exactly the sort of "[c]ryptic or conclusory claims of confidentiality" found wanting in past decisions. *Addison Whitney*, 2020 NCBC LEXIS 74, at *4. That information is neither a trade secret nor the kind of similarly sensitive information that must be shielded from the public eye. Its disclosure might be embarrassing, but the risk of embarrassment or reputational harm, if that is the true concern, is not enough to warrant sealing. *See, e.g., Howard v. IOMAXIS, LLC*, 2023 NCBC LEXIS 134, at *4 (N.C. Super. Ct. Oct. 30, 2023); *Fleming v. Horner*, 2020 NCBC LEXIS 88, at *11 (N.C. Super. Ct. July 27, 2020).

11. In sum, the parties have not rebutted the public's presumptive right of access. Accordingly, in its discretion, the Court **DENIES** both motions to seal. The Mecklenburg County Clerk of Superior Court shall unseal the settlement agreement, (ECF No. 10.1), Tuttle's brief in support of his motion to dismiss, (ECF No. 9), and Whalen and CU SOBE's opposition brief, (ECF No. 19), within 14 days of the entry of this Order.

SO ORDERED, this the 19th day of November, 2024.

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