

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Civil Action No. 5:21-cv-00251-BO

BERINGER COMMERCE, INC. d/b/a
BLUE ACORN iCi,

Plaintiff,

v.

FIN CAP, INC. d/b/a
“BLUEACORN.CO,” BLUE ACORN
PPP, LLC, BLUE OAK FOREST, LLC,
MICHAEL S. COTA, JIMMY FLORES,
STEPHANIE HOCKRIDGE REIS, and
NATHAN REIS,

Defendants.

**PLAINTIFF’S MEMORANDUM IN
SUPPORT OF MOTION FOR LEAVE TO
FILE UNDER TO SEAL**

NOW COMES Plaintiff BERINGER COMMERCE, INC. d/b/a BLUE ACORN iCi, by and through undersigned counsel, and submits this Memorandum in Support of its Motion for Leave to File Under Seal. In support of this Motion, Plaintiff states as follows:

1. Plaintiff seeks to file Exhibits F, J, L, and N to its Verified Complaint (the “Exhibits”) under seal, each of which have been contemporaneously filed as proposed sealed documents.

2. The Exhibits consist of consumer complaints submitted to Plaintiff regarding services provided by Defendants in connection with their business which purports to assist small businesses and contractors with obtaining loans through the federal Paycheck Protection Act (“PPP”). As such, the Exhibits contain PPP application materials discussing, among other things, each applicant’s total monthly payroll, and other sensitive financial and business information.

3. The consumers who submitted the complaints contained in the Exhibits are not parties to the instant action.

4. Before sealing any documents, courts must determine whether the public's right of access arises from the common law or the First Amendment. *Stone v. Univ. of Md.*, 855 F.2d 178, 180 (4th Cir. 1988). "The common law presumption in favor of access attaches to all judicial records and documents, whereas First Amendment protection is extended to only certain judicial records and documents, for example, those filed in connection with a summary judgment motion." *Quinn v. Town of Fremont*, No. 5:12-CV-742-D, 2013 WL 2285347, at *1 (E.D.N.C. May 23, 2013) (unpublished). Where the document sought to be sealed is a pleading, the public's right of access arises from the First Amendment. *Id.* (citing *Rushford v. New Yorker Magazine*, 846 F.2d 249, 252–53 (4th Cir. 1988)).

5. "Under this First Amendment standard, the movant must demonstrate that the denial of access is necessitated by a compelling government interest or non-governmental interest that implicates similar 'higher values.'" *Nielson v. Portfolio Recovery Assocs., LLC*, No. CV 2:18-1610-RMG, 2019 WL 2513722, at *2 (D.S.C. June 18, 2019) (unpublished) (citing *Press-Enter. Co. v. Riverside*, 464 U.S. 501, 510 (1984)). "Such private interests outweigh the First Amendment presumption of access 'only in certain circumstances' that include a criminal defendant's Sixth Amendment right to a fair trial, *privacy interests of non-parties*, trade secrets, attorney-client relationships, and contractual non-disclosure provisions." *Id.* (citing *Companion Prop. & Cas. Ins. Co. v. Wood*, No. 3:14-cv-03719-CMC, 2017 WL 279767, at *2 (D.S.C. Jan. 23, 2017) (unpublished)) (emphasis added).

6. "When considering a motion to seal, district courts must give the public notice of the request to seal and a reasonable opportunity to challenge the request." *Mears v. Atl. Se. Airlines*,

Inc., No. 5:12-CV-613-F, 2014 WL 5018907, at *2 (E.D.N.C. Oct. 7, 2014) (unpublished) (citing *In re Knight Publ'g*, 743 F.2d 231, 235 (4th Cir.1984)). “The filing of a litigant’s motion to seal . . . is sufficient to provide public notice and opportunity to challenge the request to seal.” *Id.*

7. “The court must also consider less drastic alternatives to sealing, if any.” *Id.*

8. Here, the public’s right of access to the Exhibits arises under the First Amendment. However, the materials contained in the Exhibits concern “the privacy interests of non-parties,” which constitutes one of the limited circumstances sufficient to overcome the public’s First Amendment right of access. *See Nielson*, 2019 WL 2513722, at *2.

9. The Exhibits have been redacted pursuant to Federal Rule of Civil Procedure 5.2, which requires redaction of certain information such as social security numbers and financial account numbers. Even with these redactions applied, however, the Exhibits still contain sensitive and private information related to operation of businesses owned by non-parties to the instant lawsuit. Additionally, further redactions would render the Exhibits cumbersome and difficult to use for the parties and the Court. As a result, there are no viable alternatives to sealing the Exhibits. *See Collins v. Chem. Coatings, Inc.*, No. 5:07CV116, 2008 WL 5105277, at *2 (W.D.N.C. Dec. 1, 2008) (unpublished) (determining that no alternatives existed to sealing and stating that “sealing is necessary to protect sensitive personal health information and identifiers from becoming public records and redacting the pleadings would result in much of the material being useless.”).

10. The filing of the instant motion gives the public adequate “notice and opportunity to challenge the request to seal.” *Mears*, 2014 WL 5018907, at *2.

For the reasons stated above, Plaintiff requests that this Court grant leave to file Exhibits F, J, L, and N to its Verified Complaint under seal.

RESPECTFULLY SUBMITTED this 10th day of June, 2021.

/s/ **Beth A. Stanfield**

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing **PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE UNDER TO SEAL** has been filed with the Clerk for the United States District Court, Eastern District of North Carolina, using the electronic filing system of the Court and that the foregoing was served upon the following persons by depositing a copy of the same in the United States Mail in an envelope, postage prepaid, addressed as follow:

- ✓ By placing a copy, contained in a first-class, postage paid wrapper, into a depository under the exclusive custody of the United States Postage Service, addressed to the parties as indicated below:

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This the 10th day of June, 2021.

/s/ Beth A. Stanfield
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