

STATE OF NORTH CAROLINA  
WAYNE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
19 CVS 166

KEVIN D. AMORY,

Plaintiff,

v.

ACTS CONTRACTING, INC.; ACTS  
INVESTMENTS, LLC; and BRAX-  
CBOC, LLC,

Defendants.

**ORDER ON PLAINTIFF'S MOTION  
FOR SUMMARY AND EXPEDITED  
ORDERS PERMITTING INSPECTION  
AND COPYING OF CORPORATE AND  
LLC RECORDS**

THIS MATTER is before the Court upon Plaintiff Kevin D. Amory's ("Amory") Motion for Summary and Expedited Orders Permitting Inspection and Copying of Corporate and LLC Records ("Motion"; ECF No. 5.) In the Motion, Amory seeks an order from the Court compelling Defendants ACTS Contracting, Inc. ("ACTS Contracting"), ACTS Investments, LLC ("ACTS Investments"), and BRAX-CBOC, LLC ("BRAX"; collectively the "Defendants") to permit him to inspect and copy their respective corporate and accounting records. (*Id.* at p. 3.)

THE COURT, having considered the Motion, the briefs in support of and in opposition to the Motion, the arguments of counsel at the hearing, and other appropriate matters of record, concludes that the Motion should be GRANTED, in part, and DENIED, in part, as set forth below.

*A. Factual and Procedural Background*

1. Amory is a 25% shareholder of ACTS Contracting and a 25% owner and member of ACTS Investments and BRAX. On November 23, 2018, Amory sent separate demand letters to each of the Defendants ("Demand Letters"; ECF No. 3,

Exs. 1–3),<sup>1</sup> demanding access to a broad set of company records. (*Id.*) Specifically, Amory demanded that ACTS Contracting permit inspection of the following:

1. Certified copy of all meeting minutes and resolutions included in the corporate book.
2. Copy of each monthly bank statement for any and all accounts in the name of ACTS Contracting, Inc. beginning in April of 2018 and each month thereafter.
3. Copy of ACTS Contracting's contracts for every construction project.
4. Copy of ACTS Contracting's monthly billing for each project beginning April 2018 and each month thereafter.
5. Copy of all change orders to ACTS Contracting's contract on every construction project.
6. Copy of all subcontracts/purchase orders issued to subcontractors/suppliers on every construction project.
7. Copy of all change orders issued to subcontractors on every construction project.
8. Copy of all monthly progress invoices from all subcontractors/suppliers on every construction project beginning April 2018 and each month thereafter.
9. Copy of any and all other agreements, not covered by the four above requests.
10. Copy of all current estimated cost to complete projections for each project currently under construction.

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<sup>1</sup> The demand letters were filed with Amory's Complaint in this matter and are attached to the Complaint as exhibits 1-3. The demand letter to ACTS Contracting is exhibit 1; the demand letter to ACTS Investments is exhibit 2; and the demand letter to BRAX is exhibit 3.

11. Copy of each monthly loan statement, for every loan that ACTS Contracting, Inc. is a guarantor, beginning in April 2018 and every month thereafter.
12. Monthly Accrual Basis Balance Sheets beginning in April of 2018 and each month thereafter.
13. Monthly Accrual Basis Income Statements beginning in April of 2018 and each month thereafter.
14. Monthly Accrual Basis Job Cost Profitability Summary beginning in April of 2018 and updated through each month thereafter.
15. Check Register for each month beginning in April of 2018 and each month thereafter.
16. Deposit Register for each month beginning in April of 2018 and each month thereafter.
17. Payroll Summary for each month beginning in April of 2018 and each month thereafter.
18. Monthly General Ledger for each month beginning in April of 2018 and each month thereafter.
19. Monthly Transaction Detail for Journal Entries Only beginning in April of 2018 and each month thereafter.

(ECF No. 3, Ex. 1.)

2. Amory demanded that ACTS Investments permit inspection of the following:

1. Certified copy of all meeting minutes and resolutions included in the company book.
2. Copy of each monthly bank statement for any and all accounts in the name of ACTS Investments, LLC beginning in April of 2018 and each month thereafter.

3. Copy of each monthly loan statement, on every loan that ACTS Investments, LLC is a guarantor, beginning in April 2018 and every month thereafter.
4. Monthly Accrual Basis Balance Sheets beginning in April of 2018 and each month thereafter.
5. Monthly Accrual Basis Income Statements beginning in April of 2018 and each month thereafter.
6. Check Register for each month beginning in April of 2018 and each month thereafter.
7. Deposit Register for each month beginning in April of 2018 and each month thereafter.
8. Payroll Summary for each month beginning in April of 2018 and each month thereafter.
9. Monthly General Ledger for each month beginning in April of 2018 and each month thereafter.
10. Monthly Transaction Detail for Journal Entries Only beginning in April of 2018 and each month thereafter.

(ECF No. 3, Ex. 2.)

3. In addition, Amory demanded ACTS Investments permit inspection of most of the same records for any “Investment Entities Owned in Whole or In Part by ACTS Investments, LLC.” (*Id.*)

4. Finally, Amory demanded that BRAX permit inspection of the same items 1–10 as demanded from ACTS Investments. (ECF No. 3, Ex. 3.)

5. Amory’s demand to inspect and copy specified records of ACTS Contracting was made pursuant to sections 55-16-02 and 55-16-03 of North Carolina’s Business Corporation Act, which governs a “qualified shareholder’s” right to inspect and copy corporate records and the scope of the right to inspect. (*Id.* at Ex. 1.); N.C.

Gen. Stat. § 55-16-02–16-03 (hereinafter the North Carolina General Statutes are referred to as “G.S.”). Amory’s demands to inspect and copy certain records of ACTS Investments and BRAX were made pursuant to section 57D-3-04 of North Carolina’s Limited Liability Company Act (“LLC Act”), which governs the information rights of the members of limited liability companies (“LLC”). (ECF No. 3, Exs. 2–3); G.S. § 57D-3-04. Each of the Demand Letters stated that the purpose of the demand is to allow Amory to determine the value of his ownership, or membership, share in the respective companies. (ECF No. 3, Exs. 1–3, at p. 1.)

6. On December 4, 2018, Amory’s counsel met with Defendants’ counsel to discuss the information demanded by Amory, and the parties subsequently exchanged emails regarding potential terms of Defendants’ disclosure of the information. (ECF No. 3, at ¶¶ 13–14.)

7. On December 17, 2018, Defendants’ counsel sent Amory’s counsel a letter on behalf of ACTS Contracting and ACTS Investments that stated objections to Amory’s demands, proposed disclosure of a more limited set of financial records than those requested, and offered a timeframe for those disclosures. (Dec. 17 Letter, ECF No. 3, at Ex. 4.)<sup>2</sup> In particular, the Defendants stated that:

- the requests “went far beyond the [a]ccounting records’ described in G.S. § 55-16-02 or the financial documents described in G.S. § 57D-3-04”;
- the requests were not made for a valid purpose because, “given the preliminary injunction currently in place against Mr. Amory, his requests appear aimed at assisting him in seeking to compete against CMI”;

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<sup>2</sup> There is no evidence in the record that ACTS Investments or BRAX formally responded to Amory’s demands for inspection within the timeframes required by the Statute. G.S. § 57D-3-04(d). However, Plaintiff does not argue that the failure to timely respond waives or in any way prejudices the LLCs’ right to object to the requested inspection.

- Defendants were not able to provide accurate financial records “because of errors and discrepancies in the accounting records left behind by Mr. Amory”;
- “[O]nce [Defendants] are satisfied that they have fixed the accounting problems left behind by Mr. Amory, and once they have assurance that he will not use the information to evade the effect of the Court’s preliminary injunction, they will produce the accounting records described in G.S. §§ 55-16-02 and 57D-3-04”; and
- During the first quarter of 2019, “the Companies would agree to produce the accounting records that would typically be found in an annual financial statement – i.e., balance sheet, income statement, cash flow statement, profit and loss statement.”

(*Id.* at pp. 1–2.) However, Defendants also offered to provide Amory with balance sheets, income statements, cash flow statements, and profit and loss statements after they corrected alleged “errors” in the records that were caused by Amory’s bookkeeping. (*Id.*) To this date, Defendants have not permitted Amory to inspect and copy, or provided Amory with copies of, the records he requested in the Demand Letters.

8. On January 29, 2019, Amory instituted the current action by filing his Complaint and the present Motion. (ECF Nos. 3, 5.) Amory’s Complaint and the Motion seek the same relief, an order from the Court permitting him to inspect the minutes, resolutions, and accounting records he has demanded from Defendants. In support of the Court’s authority to issue such an order against a limited liability company, Plaintiff references G.S. § 55-16-04(b). (ECF No. 3, at p. 2.)

9. On January 31, 2019, Amory filed a brief in support of the Motion. (Br. in Supp., ECF No. 7.) On February 25, 2019, the Defendants filed a brief and three affidavits in opposition to the Motion. (Br. in Opp., ECF No. 10; Aff. of Sammy Sasser,

ECF No. 10.2; Aff. of Dennis Newman, ECF No. 10.3; Aff. of Michael Fryt, ECF No. 10.4.) On March 11, 2019, Amory submitted a reply brief, along with an affidavit and exhibits in support of the Motion. (Reply Br., ECF No. 12; Aff. of Kevin Amory, ECF No. 13; Exs. to Aff. of Kevin Amory, ECF Nos. 13.1–13.3.) On March 15, 2019, with leave of the Court, Defendants filed a surreply brief and surreply affidavit in opposition to the Motion. (Surreply Br., ECF No. 15.2; Surreply Aff. of Sammy Sasser, ECF No. 15.3.) The Motion was heard by the Court on March 21, 2019. During the hearing, the Court asked for the parties to submit supplemental briefing. On March 25, 2019, the parties submitted supplemental briefs. (Amory’s Suppl. Br., ECF No. 18; Defendants’ Suppl. Br., ECF No. 19.) The Motion is now ripe for resolution.

*B. Analysis*

10. During the hearing on the Motion, counsel for Amory conceded that he believes Amory has received from Defendants the requested meeting minutes and resolutions of Defendants. Therefore, the only remaining information requests at issue are those involving the accounting records of Defendants.

**a. Amory’s Demand to Inspect ACTS Contracting’s Accounting Records**

11. Section 55-16-02 of the North Carolina Business Corporation Act governs the inspection of corporate records by “qualified shareholders.” A qualified shareholder is a person who has been a shareholder in the corporation for at least six months and who holds at least 5% of the corporation’s outstanding shares. There is no dispute in this case that Amory is a qualified shareholder under the statute.

12. “The Act grants qualified shareholders rights of inspection in two separate and distinct categories. [Section] 55-16-02(a) grants what are generally referred to as absolute rights of inspection, and section 55-16-02(b) grants what are generally described as qualified rights of inspection.” *Sharman v. Fortran Corp.*, 2018 NCBC LEXIS 27, at \*8 (N.C. Super. Ct. Apr. 2, 2018) (internal quotations and citation omitted). The absolute right to inspection provided by G.S. 55-16-02(a) applies to, *inter alia*, articles of incorporation, corporate resolutions, minutes of shareholders’ meetings, and the corporation’s most recent annual report. *Id.* at \*9.

13. The qualified right to inspect in G.S. § 55-16-02(b), in relevant part, entitles shareholders who comply with statutory prerequisites to inspect and copy “[a]ccounting records of the corporation . . . .” G.S. § 55-16-02(b)(2). As a prerequisite to inspecting accounting records, however, a qualified shareholder must “give[ ] the corporation written notice of his demand at least five business days before the date on which he wishes to inspect and copy. . . .” *Id.* Furthermore, the inspection of corporate accounting records is only available if the qualified shareholder’s written demand “(1) [ ] is made in good faith and for a proper purpose; (2) [ ] describes with reasonable particularity his purpose and the records he desires to inspect; and (3) [t]he records are directly connected with his purpose.” G.S. § 55-16-02(c).

14. If a qualified shareholder makes a proper demand in compliance with G.S. § 55-16-02(b) and (c) and a corporation “does not within a reasonable time” allow him to inspect and copy the records requested, the shareholder “may apply to the superior court . . . for an order to permit inspection and copying of the records



demanded.” G.S. § 55-16-04(b). Upon such application by the shareholder, the Court may “summarily order inspection and copying of the records demanded at the corporation’s expense.” G.S. § 55-16-04(a).

15. Amory argues that pursuant to G.S. § 55-16-02(b) and (c) he made a proper demand to ACTS Contracting asking to inspect and copy specified accounting records. He further argues that ACTS Contracting has failed to comply with his demands and has failed to identify a valid reason for denying the demands. Therefore, he contends that under G.S. § 55-16-04(b) he is entitled to an order compelling ACTS Contracting to comply with his requests for the accounting records and requiring ACTS to pay the costs he has expended to obtain such an order. (ECF No. 7.)

16. In response, ACTS Contracting argues that Amory’s request to inspect and copy its accounting records should be denied because the requests were not made in good faith and for a proper purpose, are not directly connected to his stated purpose of valuing his ownership interests, and because Defendants have not been able to verify the accuracy of their financial records due to errors left behind by Amory. (ECF No. 10, at pp. 7–12.) Specifically, ACTS Contracting argues that Amory is demanding the records for the purpose of using the information contained in the records to compete with ACTS Contracting, and evade a preliminary injunction entered by this Court in another lawsuit pending before the Court, *Construction Managers, Inc. of Goldsboro, Construction Managers, LLC, ACTS Contracting, Inc., and ACTS Investments, LLC v. Kevin D. Amory*, 18 CVS 1359 (“*CMI v. Amory*”). (*Id.*) In *CMI v.*

*Amory*, ACTS Contracting, ACTS Investments, and two affiliated entities, Construction Managers, Inc. (“CMI”) and Construction Managers, LLC (“CM, LLC”), make the following claims against Amory, arising primarily from Amory’s admitted downloading of files from the cloud-based software account used by his former employers CM, LLC and ACTS Contracting: (1) misappropriation of trade secrets; (2) breach of fiduciary duty; (3) constructive fraud; (4) fraud; (5) violation of N.C. Gen. Stat. § 75-1.1; (6) computer trespass; and (7) punitive damages. The Court has issued a preliminary injunction in *CMI v. Amory* that enjoins and prohibits Amory from disclosing or using any of the information he downloaded for the purpose of competing with the Plaintiffs in their specific line of construction work.

17. Sammy Sasser, President of ACTS Contracting and a manager and member of ACTS Investments and BRAX, submitted an affidavit in support of Defendants’ argument. (ECF No. 10.2.) Sasser avers that Defendants consider the information Amory seeks to be confidential business information that would be helpful to Amory’s new employer in seeking to compete against Defendants, and that providing Amory with such records would adversely impact Defendants. (*Id.* at ¶¶ 7, 8.)

18. Additionally, ACTS Contracting argues that Amory’s requests for specified accounting documents should be denied because the requests are not directly connected with Amory’s stated purpose of valuing his ownership share. In support of this argument, Defendants submitted the affidavit of Dennis A. Newman (“Newman”), a certified public accountant (“CPA”) accredited in the field of business

valuation. (Aff. of Newman, ECF No. 10.3.) Newman has performed business appraisals for six companies in the construction industry and concluded that Mr. Amory's requests for monthly bank statements, copies of construction contracts, monthly billing statements, monthly change orders, monthly purchase orders, monthly loan statements, check and deposit registers, and monthly financial statements were not reasonably directed at valuing his ownership interest. (*Id.* at ¶ 7.) According to Newman, many of the categories of information sought by Amory are not reasonable requests for a typical business evaluation.

19. Defendants do not contend that Amory has failed to identify the records he seeks to inspect with sufficient particularity. Accordingly, the Court must consider whether Amory has stated a proper purpose for inspecting the records and whether the requested records are directly related to the purpose.

20. First, the Court must reject Defendants' contention that they can deny Amory the accounting records he has requested because Defendants have not been able to verify the accuracy of their accounting records due to errors Amory left behind. Neither the Business Corporation Act nor the LLC Act provides that a corporation or an LLC may delay or avoid producing records which a shareholder or member has a right to inspect on the basis that the records have not been verified. Nor have Defendants directed the Court to any case law supporting the proposition that they may deny Amory's inspection and information rights on that basis. Furthermore, if the Court were to permit the withholding of unaudited corporate or LLC accounting records until they were verified, it would open up the door for Corporations and LLCs

to delay providing records to their shareholders and members for potentially long periods of time, thereby diminishing the statutory inspection rights of the shareholders and members. Thus, in the absence of clear authority on the issue, the Court is unwilling to deny Amory's record demands because Defendants have been unable to verify the accuracy of their financial information.<sup>3</sup>

21. Next, Defendants concede, (ECF No. 10, at p. 7), and the Court concludes, that Amory's stated reason for demanding to inspect the accounting records, to determine the value of his ownership in ACTS Contracting, is a proper purpose. *Carter v. Wilson Constr. Co.*, 83 N.C. App. 61, 65, 348 S.E.2d 830, 832 (1986) ("Purposes which previously have been deemed proper are the shareholder's good faith desire to (1) determine the value of his stock").

22. If the plaintiff-shareholder states a proper purpose, "[d]efendants must overcome the presumption of good faith in plaintiff's favor by showing that plaintiff's purpose is improper." *Id.*; *Sharman*, 2018 NCBC LEXIS 27, at \*14 ("Once a proper purpose is alleged, our courts have held that the burden of proof rests upon the corporation, if it wishes to defeat the shareholder's demand, to allege and show by facts, if it can, that the shareholder is motivated by some improper purpose." (citation and quotations omitted)).

23. Defendants contend that, despite Amory's facially proper stated purpose for requesting inspection, the evidence shows he did not make the request in good faith, and had an improper purpose for the request. Defendants argue that it already

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<sup>3</sup> The Court also rejects this argument to the extent Defendants raise it with respect to Amory's demands for information from ACTS Investments and BRAX.

has been established in *CMI v. Amory* that Amory improperly downloaded confidential business information from ACTS Contracting before he left his employment, and that Amory has been enjoined from using this information to compete with Defendants. (ECF No. 10, at pp. 8–9.) Defendants argue that they believe Amory is attempting to “evade the injunction” by requesting “updated versions of the same documents and information Amory stole” from ACTS Contracting, and that he intends to use the requested information to compete with Defendants. (*Id.* at p. 9.)

24. On a related theme, Defendants also contend that “[t]he timing of Amory’s Requests also indicated that he had a second, improper purpose— to gain leverage in *CMI v. Amory*” because “the [r]equests were sent just nine days after the CMI Plaintiffs filed their Amended Complaint [ ], adding allegations that Amory had engaged in a fraudulent overbilling scheme in a [ ] project in Macon, Georgia.” (*Id.*) Defendants do not provide any evidentiary support for their speculation as to Amory’s desire to “gain leverage” in the other lawsuit.

25. The Court has carefully considered the parties’ arguments, and concludes that Defendants have failed to meet their burden of overcoming the presumption that Amory’s request for inspection was made in good faith and for a proper purpose. The Court finds Defendants’ argument that Amory made the demand for the improper purpose of obtaining information to compete with Defendants, or to evade the preliminary injunction in *CMI v. Amory*, meritless. Pursuant to G.S. § 55-16-04(d), the Court can “impose reasonable restrictions on the

use or distributions of the records” by Amory and ensure that he does not use the records for any improper purpose, and has done so in this Order. Furthermore, Amory stated in his sworn affidavit that he has no intention of using the accounting records to compete with Defendants. (ECF No. 13, at ¶ 12.) In addition, Defendants do not explain, and the Court cannot determine, in what way the request for information would provide Amory any “leverage” in the *CMI v. Amory* action. While the Court has some pause for concern on this question because of the overly broad scope of the information requested by Amory, Amory’s basic right as a shareholder to be able to determine the value of his ownership interest in ACTS Contracting trumps Defendants’ speculative arguments about Amory’s motivation in seeking the information.

26. Defendants also argue that much of the information requested from ACTS Contracting is not directly connected, and is unnecessary, to Amory’s stated purpose of valuing his ownership. (ECF No. 10, at pp. 11–12.) On this argument, the Court agrees. Amory has requested that ACTS Contracting make available for inspection essentially every piece of financial and operational data in its possession from April 2018 to present. The requested information goes far beyond the information reasonably necessary for Amory to determine the current value of his ownership interest. ACTS Contracting presented the affidavit of Dennis Newman, a CPA with experience in business valuation in the construction industry, stating his opinion that many of the records Amory seeks are not reasonably directed at determining the value of his ownership interest. (ECF No. 10.3.) For example,

Newman opined that the requests for monthly bank, loan, and billing statements, check and deposit registers, payroll summaries, copies of individual construction contracts, subcontracts, purchase orders, and change orders were not needed to prepare a valuation. (*Id.*) On the other hand, Amory did not present any evidence in support of his need for such broad categories of information.<sup>4</sup> Therefore, the Court concludes that Amory's inspection rights should be limited only to the records which are reasonably directed to valuing his ownership interests. Having reviewed Amory's requests, the Court concludes that the following accounting records are directly connected with Amory's stated purpose of valuing his ownership share in ACTS Contracting and shall be made available for inspection: (1) monthly accrual basis balance sheets from April 2018 to present; (2) monthly accrual basis income statements from April 2018 to present; and (3) monthly general ledger from April 2018 to present. In addition, as they offered in their December 17, 2018 Letter, ACTS Contracting shall also permit inspection of its balance sheet, income statement, cash flow statement, and profit and loss statement.

27. In light of the above, to the extent Amory seeks to inspect records of ACTS Contracting, the Court concludes that the Motion should be GRANTED, in part, and DENIED, in part. Amory is entitled to an order permitting him to inspect ACTS Contracting's (1) monthly accrual basis balance sheets from April 2018 to present; (2) monthly accrual basis income statements from April 2018 to present; and

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<sup>4</sup> In an affidavit filed with his reply in support of the Motion, Amory for the first time raised a host of additional purposes, other than valuing his ownership interests, for seeking the requested information. (ECF No. 13.) The Court, however, will only consider the purpose stated in Amory's Demand Letters in deciding the Motion.

(3) monthly general ledger from April 2018 to present, and ACTS Contracting's balance sheet, income statement, cash flow statement, and profit and loss statement. Amory is not entitled to inspect the remaining records he has requested from ACTS Contracting.

**b. Amory's Right to Inspect ACTS Investments and BRAX's Accounting Records**

28. Section 57D-3-04 of the North Carolina Limited Liability Company Act governs LLC members' information rights. As relevant to determination of the Motion, section 57D-3-04 specifically states that "each member may inspect and copy or otherwise obtain from the LLC . . . information . . . from which [ ] the member's capital interest may be ascertained and . . . from which the status of the business and the financial condition of the LLC may be ascertained." G.S. § 57D-3-04(a)(4)–(5).

29. A member can exercise his information rights by signing and delivering "written notice of exercise to the LLC at least seven days before the date on which the inspection is to take place." The notice "must state (i) the records or other information to be inspected and copied or otherwise provided by the LLC and (ii) the purpose for, and intended use of, the information." G.S. § 57D-3-04(d).

30. In response to the notice, the LLC must "either comply with the member's demand or deliver written notice to the member of the extent to which the LLC declines to make available any of the demanded information and the reasons for that decision." *Id.* The statute only recognizes two explicit reasons that an LLC can decline to make requested information available to a member. First, except in limited circumstances, "[t]he LLC need not disclose to any member or any agent or



representative of a member any information related to any other interest owner . . .

.” G.S. § 57D-3-04(f). Second, the LLC

need not disclose or otherwise make available to a member, manager, or other company official trade secrets or other confidential information of a nature that its disclosure could adversely affect the LLC, to the extent that the managers or other applicable company officials determine the information cannot be adequately safeguarded by other means, until either there no longer is a risk that its disclosure will adversely affect the LLC or the LLC becomes able to protect itself in some other way.

*Id.* The statute further allows an LLC to

impose conditions, restrictions, limitations, and standards on the exercise of a member's inspection and other information rights, including redacting names and other confidential information, providing summaries of documents, or requiring the member to enter an agreement to not disclose and otherwise maintain the confidentiality of the information provided . . . .

*Id.*

31. As a preliminary matter, Defendants argue that Amory does not have the right to inspect the records of investment entities owned by ACTS Investments but of which he is not a member. (ECF No. 10, at p. 14.) In response, Amory cites no authority supporting the right of a non-member to seek inspection of an LLC's records. Section 57D-3-04 is clear; inspection rights are only provided to members of an LLC. Therefore, to the extent Amory seeks to inspect records of entities in which he is not a member, the Motion should be DENIED.

32. With respect to ACTS Investments and BRAX, Amory maintains that he made a valid demand for specified accounting records under G.S. § 57D-3-04 “by

sending written, signed demand letters . . . , which identified in detail the documents he requested.” (ECF No. 7. at pp. 5–6.) Furthermore, he argues that neither ACTS Investments nor BRAX has identified a good faith reason for refusing to provide the information requested. (*Id.*) Therefore, Amory claims entitlement to an order compelling ACTS Investments and BRAX to comply with his demands.

33. ACTS Investments and BRAX first argue that Amory’s demands to inspect and copy accounting records should be denied because the LLC Act does not provide a mechanism by which a member can enforce his right to inspect an LLC’s records. Defendants recognize that “[a]bsent such a provision, complaining members in North Carolina typically have sought injunctive relief to enforce their inspection rights” but that “Amory has not done so here.” (*Id.* at pp. 13–14.) Amory asks the Court to look to section 55-16-04 of the Business Corporation Act and imply like authority under the LLC Act, or to exercise its inherent mandamus powers, in addressing ACTS Investments’ and BRAX’s failure to comply with his requests. (ECF No. 12.)

34. Unlike the Business Corporation Act, the LLC Act does not provide an enforcement provision by which members can seek an order compelling the LLC to comply with information requests. However, this Court has previously concluded that an LLC member should, at least, be able to employ the mandamus power of the courts to enforce the statutory right to inspect an LLC’s records, just as a shareholder can rely on the mandamus power of the courts to exercise his common law rights of inspection. *Miller v. Burlington Chem. Co.*, No. 13CVS9719, Order on Plaintiffs’

Motions for Mandatory Injunction, ECF No. 89, pp. 9–10 (N.C. Sup. Ct. Sept. 27, 2016) (unpublished) (citing *Parsons v. Jefferson-Pilot Corp.*, 333 N.C. 420, 426, 426 S.E.2d 685, 689 (1993)); see also Russel M. Robinson, II, *1 Robinson on North Carolina Corporation Law § 34.03* (2018) (“Although the Act does not define what remedies are available to a member who is improperly denied access to an LLC’s books and records, it is likely that a member could obtain a court order requiring the LLC to make the relevant information available for inspection and copying.”).

35. “The writ of mandamus is an order from a court of competent jurisdiction to a board, corporation, inferior court, officer or person commanding the performance of a specified official duty imposed by law.” *Sutton v. Figgatt*, 280 N.C. 89, 93, 185 S.E.2d 97, 99 (1971). A plaintiff is entitled to a writ of mandamus where: (1) the plaintiff has a clear legal right to the act requested; (2) the defendant has a duty to perform the act; (3) the act is ministerial and not discretionary; (4) the defendant has refused to perform the act; and (5) there is no other legal remedy. *In re T.H.T.*, 362 N.C. 446, 453–54, 665 S.E.2d 54, 59 (2008).

36. The Court, having considered the applicable law, existing authorities, and the arguments of counsel, concludes that an LLC member’s inspection rights under § 57D-3-04 can be enforced by seeking an order requiring the LLC to make the relevant information available. The information rights provided to members in § 57D-3-04 would be hollow if, as Defendants argue, the LLC could simply deny the member his right to inspect LLC records and the member had no avenue to challenge the denial and enforce his or her inspection rights. Instead, the Court reads G.S. §

57D-3-04 as giving the member an enforceable right to inspect the information listed in the statute.

37. The Court also concludes that, in the absence of a specified procedure, Amory's Complaint and the Motion properly placed the issue of enforcement of his rights under G.S. § 57D-3-04 before the Court for resolution, whether through direct invocation of a right to enforce implied in the statute, or by invoking the mandamus powers of this Court. Accordingly, the Court will consider Amory's request to compel.

38. Additionally, the Court concludes that ACTS Investments' and BRAX's reliance on G.S. § 57D-3-04(f) in support of its denial of Amory's inspection rights is misplaced. ACTS Investments and BRAX contend that they need not disclose to Amory any of the accounting records he requests because the information requested constitutes trade secret/confidential information of a nature that its disclosure could adversely affect the LLC. However, § 57D-3-04(f) allows non-disclosure only "to the extent that the managers or other applicable company officials determine the information cannot be adequately safeguarded" and only "until either there no longer is a risk that its disclosure will adversely affect the LLC or the LLC becomes able to protect itself in some other way." G.S. § 57D-3-04(f). Here, in light of the injunction already in place against Amory, Amory's sworn statement that he does not intend to compete with Defendants, and the Court's inclusion of additional safeguards on the use of the records to be disclosed in this Order, there is no longer a risk that disclosure of the accounting records sought by Amory will adversely affect the interests of ACTS

Investments or BRAX. Accordingly, ACTS Investments' and BRAX's reliance on G.S. § 57D-3-04(f) is misplaced.

39. Therefore, to the extent Amory seeks to inspect records of ACTS Investments and BRAX, the Court concludes that the Motion should be GRANTED, in part, and DENIED, in part. Amory is entitled to an order permitting him to inspect and copy ACTS Investments' and BRAX's (1) monthly accrual basis balance sheets from April 2018 to present; (2) monthly accrual basis income statements from April 2018 to present; and (3) monthly general ledger from April 2018 to present, and ACTS Investments and BRAX's balance sheet, income statement, cash flow statement, and profit and loss statement. Amory is not entitled to inspect the remaining records he has requested from ACTS Investments and BRAX.

**c. Request for Attorneys' Fees**

40. Amory also seeks an award of attorneys' fees he incurred in compelling ACTS Contracting to make the requested records available for inspection "[b]ecause ACTS Contracting has no good faith basis for denying his request." (ECF No. 7, at p. 5.) Section 55-16-04(c) provides as follows:

If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs (including reasonable attorneys' fees) incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

41. This Court recently has held

A good faith refusal of a shareholder's inspection demand normally will involve reasonable doubt whether the

shareholder had the necessary good faith and proper purpose or whether the records demanded are directly connected to the shareholder's purpose. This analysis entails a partially objective standard, in that the corporation must be able to point to some objective basis for its doubt that the shareholder was acting in good faith or had a purpose that was proper.

*Sharman*, 2018 NCBC LEXIS 27, at \*27–28 (quoting N.C. Gen. Stat. § 55–16–04 Official Comment (internal quotations omitted)).

42. The Court, in its discretion, concludes that under the facts involved in this case, Defendants, at a minimum, had reasonable doubt about “whether the records demanded [were] directly connected to the shareholder’s purpose.” *Id.* As discussed above, Amory’s requests went well beyond the accounting and financial records necessary to determine the value of his membership interest in ACTS Contracting. In addition, Defendants can point to the objective facts that Amory is a former employee working for a potential competitor and the fact that Amory admittedly downloaded and took with him a large and broad amount of financial and operational data when he left his employment. Accordingly, an award of costs and fees to Amory under G.S § 55-16-04(c) is not warranted in this case.

43. Amory also requests an award of attorneys’ fees regarding his motion under section 57D-3-04 to compel inspection of the records of ACTS Investments and BRAX. (ECF No. 7, at p. 6.) However, the LLC Act does not provide for an award of attorneys’ fees to a party compelling inspection of an LLC’s records. *Harborgate Prop. Owners Ass’n v. Mountain Lake Shores Dev. Corp.*, 145 N.C. App. 290, 297–98, 551 S.E.2d 207, 212 (2001) (stating that generally, an award of attorneys’ fees is not

available absent an express statutory provision providing for such an award). Accordingly, Amory's request for an award of costs and fees should be DENIED.

**d. Safeguards on Disclosure**

44. Finally, G.S. § 55-16-04(d) provides that a court order compelling the inspection of records "may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder." In addition, G.S. § 57D-3-04(f) permits an LLC to place restrictions and limitations on the use of and disclosure of confidential information disclosed pursuant to a member's record request, and the Court concludes that it has adequate equitable authority to do the same when ordering such disclosure. Accordingly, the Court prohibits Amory, and anyone acting on behalf of or in concert with Amory, from directly or indirectly using or disclosing any of the confidential accounting and financial information made available to him for inspection and copying by this Order, for any purpose other than determining the value of his ownership or membership interest in Defendants.

WHEREFORE, it is hereby ORDERED that the Motion is GRANTED, in part, and DENIED, in part, as follows:

1. On or before May 3, 2019, Defendants shall make available to Amory for inspection and copying Defendants' respective (1) monthly accrual basis balance sheets from April 2018 to present; (2) monthly accrual basis income statements from April 2018 to present; and (3) monthly general ledger from April 2018 to present, and Defendants' balance sheets, income statements,

- cash flow statements, and profit and loss statements. Amory is not entitled to inspect the remaining records he has requested from Defendants.
2. Pursuant to G.S. §§ 55-16-03(c) and 57D-3-04(e), Defendants may require Amory to pay a reasonable charge for the labor, material, or other costs of making the records available for inspection and copying.
  3. Amory, and anyone acting on behalf of or in concert with Amory, are prohibited from, directly or indirectly, using or disclosing any of the confidential accounting and financial information made available to him for inspection and copying by this Order for any purpose other than determining the value of his ownership or membership interest in Defendants.
  4. Except as specifically granted herein, the Motion is DENIED.

This, the 16th day of April, 2019.

/s/ Gregory P. McGuire  
Gregory P. McGuire  
Special Superior Court Judge for  
Complex Business Cases