STATE OF NORTH CAROLINA COUNTY OF MECKLENBURG	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 18 CVS 11679
KELLY C. HOWARD and FIFTH THIRD BANK, NATIONAL ASSOCIATION, AS CO-TRUSTEES OF THE RONALD E. HOWARD REVOCABLE TRUST U/A DATED FEBRUARY 9, 2016, AS AMENDED AND RESTATED, Plaintiffs, v. IOMAXIS, LLC f/k/a IOMAX Information Services, LLC n/k/a MAXISIQ, INC.; BRAD C. BOOR a/k/a BRAD C. BUHR; JOHN SPADE, JR.; WILLIAM P. GRIFFIN, III; NICHOLAS HURYSH, JR.; ROBERT A. BURLESON, and FIVE INSIGHTS, LLC Defendants.	**ORDER APPOINTING A RECEIVER OVER IOMAXIS, LLC n/k/a MAXISIQ, INC.**

1. **THIS MATTER** is before the Court on Plaintiffs' Amended Motion for Appointment of a Receiver ("Motion"), (ECF No. 330). Plaintiffs, trustees of the Ronald E. Howard Revocable Trust ("Trust"), allege that the IOMAXIS Defendants[1] have formulated and are actively implementing a plan to transfer assets, disguise distributions paid to other interest holders, and dilute the Trust's economic interest in IOMAXIS, LLC, now known as MAXISIQ, Inc. ("IOMAXIS" or "Company").

[1] The IOMAXIS Defendants include IOMAXIS, LLC f/k/a IOMAX Information Services, LLC n/k/a MAXISIQ, Inc., Brad C. Boor a/k/a Brad C. Buhr, John Spade, Jr., William P. Griffin, III, Robert A. Burleson, and Five Insights, LLC.

Plaintiffs seek the appointment of a receiver pursuant to (a) the North Carolina Commercial Receivership Act, N.C.G.S. § 1-507.20 *et seq.*; (b) Article 38 of the North Carolina General Statutes, N.C.G.S. § 1-501 *et seq.*; (c) the North Carolina Uniform Voidable Transactions Act, N.C.G.S. § 39-23.1 *et seq.*; and (d) this Court's inherent authority, to investigate certain transfers and protect the Trust's economic interest during the pendency of this lawsuit.

2. Having considered the Motion, the related briefing, the arguments of counsel at a hearing on the Motion, and other relevant matters of record, the Court hereby **GRANTS** the Motion, as provided below.

Johnston, Allison & Hord, P.A., by Greg C. Ahlum, David T. Lewis, Patrick E. Kelly, and Katie D. Burchette, for Plaintiff Kelly C. Howard, as co-Trustee of the Ronald E. Howard Revocable Trust u/a dated February 9, 2016, as Amended and Restated.

Womble Bond Dickinson (US) LLP, by Lawrence A. Moye and Scott D. Anderson, for Plaintiff Fifth-Third Bank, NA, as co-Trustee of the Ronald E. Howard Revocable Trust u/a dated February 9, 2016, as Amended and Restated.

Allen, Chesson & Grimes PLLC, by David Allen, Benjamin S. Chesson, and Anna Majestro, and Nelson Mullins Riley & Scarborough LLP, by Travis Bustamante, for Defendants IOMAXIS, LLC f/k/a IOMAX Information Services, LLC n/k/a MAXISIQ, Inc., Brad C. Boor a/k/a Brad C. Buhr, John Spade, Jr., William P. Griffin, III, and Robert A. Burleson.

Miller Monroe & Plyer, PLLC, by Jason A. Miller, Paul T. Flick, and Robert B. Rader, III, and Whiteford Taylor Preston, LLP by Steven E. Tiller for Defendant Nicholas Hurysh.

Earp, Judge.

I. FINDINGS OF FACT

3. In 2001, Ronald E. Howard ("Ron Howard") formed IOMAX Information Services, LLC as a real estate investment holding company. (Suppl. and Second Am. Compl., Ex. 3 [the "Delaware Petition"] ¶¶ 8, 10, ECF No. 401.3.) After Defendant Buhr became a member a couple of years later, the Company changed its name to IOMAXIS, LLC, and focused its business on technical and engineering services for participants in the national security industry. (Delaware Petition ¶¶ 13-16; Supplemental and Second Am. Compl. ["Second Am. Compl."] ¶¶ 33-35, ECF No. 401.)

4. From the time the Company was formed in 2001 until his death in 2017, Ron Howard was the majority member of IOMAXIS with a 51% ownership stake.[2] Buhr was largely responsible for the daily operations. (Delaware Petition ¶¶ 17-18.)

5. IOMAXIS was organized as a North Carolina LLC and has a written operating agreement (the "NC Operating Agreement"). At issue in this case is whether IOMAXIS converted from a North Carolina LLC to a Texas LLC and became subject to a new operating agreement (the "Texas Operating Agreement") in 2015, prior to Ron Howard's death in June 2017. The IOMAXIS Defendants argue that it did and that the Texas Operating Agreement controls the Trust's economic interest in IOMAXIS. (Delaware Petition ¶¶ 18-21.) Plaintiffs, on the other hand, contend that no conversion occurred, and that the N.C. Operating Agreement remains in place. (Second Am. Compl. ¶¶ 58-70, 147-50.)

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[2] Plaintiffs contend that the Trust now holds the interest in IOMAXIS that Ron Howard owned at the time of his death.

Ron Howard's Death and the Ensuing Litigation

6. At the time of Ron Howard's death on 12 June 2017, the remaining members of IOMAXIS were Buhr, Trey Griffin, John Spade, and Nicholas Hurysh, Jr. (Second Am. Compl. ¶¶ 35, 38.)

7. To value Ron Howard's 51% economic interest in IOMAXIS following his death, the Howard estate requested financial information. Some information was provided, but Plaintiffs contend that it was insufficient for an appraisal of the interest. Consequently, Plaintiffs allege that Ron Howard's interest was neither redeemed nor sold to the remaining members. (Second Am. Compl. ¶¶ 92-103.) They contend that, on 8 December 2017, pursuant to Ron Howard's will, the economic interest passed with the balance of the Howard residuary estate to the Trust. (Second Am. Compl. ¶¶ 12-15.)

8. Despite a history of regular distributions to its members while Ron Howard was alive, Plaintiffs complain that, since his death some six and a half years ago, IOMAXIS has not made any distributions to the Trust. They believe that IOMAXIS's members have received value for their interests but that the Trust is being wrongfully excluded. (Second Am. Compl. ¶¶ 104-13.)

9. On 18 June 2018, Plaintiffs commenced this action seeking (a) a declaration that the 2015 conversion was invalid and that the N.C. Operating Agreement controls, (b) its share of the post-death distributions IOMAXIS has provided its members, and (c) an accounting of IOMAXIS's finances for purposes of determining the value of its interest in order to comply with buy-sell provisions in the N.C Operating Agreement. (*See generally* Compl., ECF No. 3.).

10. After Defendant Hurysh provided an affidavit containing allegations of fraud by the other defendants, (*see generally* Aff. of Nicholas Hurysh, Jr. ["Hursyh Aff"], ECF No. 97), Plaintiffs amended their Complaint to allege fraudulent concealment and violation of the North Carolina Uniform Voidable Transactions Act, N.C.G.S. §39-23.1 *et seq*. (First Am. Compl., ECF No. 197.)[3] In a Supplemental and Second Amended Complaint, Plaintiffs divided their contract claims into three separate causes of action (failure to pay distributions, breach of the buy-sell agreement, and breach of the duty of good faith and fair dealing), added allegations that the contract was repudiated, added a claim for civil conspiracy, and expanded and supplemented other factual allegations. (Second Am. Compl., ECF No. 401.)

The July 2020 Recorded Teleconferences and Hurysh's Allegations

11. On 11 September 2019, Nicholas Hurysh, formerly both a member and a high-ranking employee of IOMAXIS, attended the deposition of Bob Burleson, IOMAXIS's Rule 30(b)(6) representative. After hearing testimony about Buhr's allegedly lavish personal expenditures and transfers of IOMAXIS's assets to other entities owned by Buhr and the other individual defendants, Hurysh, who had previously been aligned with the IOMAXIS Defendants, decided to conduct his own investigation. (Hurysh Aff. ¶ 63.) As a network engineer, Hurysh had access to IOMAXIS's financial record system, JAMIS. (Hurysh Aff. ¶ 72; Def. Nicholas Hurysh Jr.'s Memo. L. Regarding Produc. Data Possession ¶ 4, ECF No. 152.)

[3] Hurysh has since filed multiple affidavits in this matter, as referenced herein.

12. Hurysh's investigation led him to retain his own counsel and to file an affidavit in which he made a number of startling accusations. Among them were that, beginning in or around September 2017, Buhr had "orchestrated a plan to artificially devalue IOMAXIS for purposes of minimizing the buyout of [the Trust's] interest in IOMAXIS." (Hurysh Aff. ¶ 36.) He allegedly accomplished this by setting up shell companies with names like "Fast Rabbit" (a/k/a. "Rapid Hare"), which he used to "siphon funds out of IOMAXIS for his own benefit and to the detriment of IOMAXIS." (Hurysh Aff. ¶ 49.)

13. According to Hurysh, Buhr engaged in misconduct "by setting up loans from IOMAXIS to Fast Rabbit and then 'repaying' these loans by adding substantial mark-ups to vendor invoices and then passing them through IOMAXIS for payment. Mr. Buhr used these phony markups to generate funds to 'repay' the loans he setup with IOMAXIS." (Hurysh Aff. ¶ 49.)

14. In addition, Hurysh testified that "[i]n or about 2013, Mr. Buhr unilaterally structured a 'loan' from IOMAXIS to Fast Rabbit in the amount of approximately $1.5M and paid [Hurysh] approximately $400,000.00. Mr. Buhr indicated that this payment would be structured as a loan to the outside world, but that the owners would not have to pay it back. Instead, he would use bonuses, increased salaries, and other methods to 'repay' the loan." (Hurysh Aff. ¶ 64.)

15. Hurysh testified that from 2015 to mid-2020, Buhr "directed millions of dollars in payments from IOMAXIS to Fast Rabbit." (Hurysh Aff. ¶ 66.) At the same time, Buhr "incurred substantial expenses on extravagant travel, massages,

entertainment, jewelry, gifts, and other personal benefits and credited these expenditures as 'payments' against the loan from IOMAXIS to Fast Rabbit as if they were legitimate business expenses." (Hurysh Aff. ¶ 50.)

16. Hurysh testified that Buhr also used other corporate entities, including vendors named "Planetary Array," "Cloud Storm," and "Peak Radius," and a shell intermediary named "Global Vector, LLC," to divert IOMAXIS's funds for his personal use. He further testified that, that "[f]rom 2015 until mid-2020, the IOMAXIS accounting system reflects that IOMAXIS paid at least $2.4M to 'Cloud Storm,' $7.1M to 'Peak Radius,' and $2.7M to 'Planetary Array.' " (Hurysh Aff. ¶¶ 43-45, 70, 72, 74-75.)

17. Buhr disputes these allegations and claims that any money from IOMAXIS to Fast Rabbit was a loan that was repaid in 2013. (IOMAXIS's Br. Opp. Mot. Appoint Receiver, Ex. A—Feb. 22, 2021 Aff. of Brad Buhr ["Buhr Aff."] ¶¶ 18-20, 23, ECF No. 112.2.) However, Plaintiffs argue that IOMAXIS has not produced financial records to substantiate Buhr's assertion. The IOMAXIS Defendants further argue that Hurysh's allegations are untrue and arise from his own discontent at their refusal to increase his membership interest in IOMAXIS. (IOMAXIS's Br. Opp. Pls.' Mot. Appoint Receiver 3, ECF No. 112; Aff. Brad Buhr ¶ 9.)

18. Hurysh's assertions resulted in Plaintiffs filing a motion for the appointment of a receiver on 26 January 2021. (Pls.' Mot. Appoint Receiver, ECF No. 106.) Shortly before a hearing on the motion on 14 July 2021, however, Hurysh revealed that he had recorded two telephone conference calls – one on 17 July 2020

and a second on 20 July 2020. He contended that these recordings substantiated his testimony that diversion was occurring.[4] The Trust was not invited to participate in either telephone conference call, but all of the members of IOMAXIS were on the calls. (Def. Nicholas Hurysh Jr.'s Mot. *In Camera* Inspection and Leave File Affs., Recordings, and Trs. Under Seal ¶¶ 8-23, ECF No. 156.)

19. During the 17 July 2020 conference call, Hurysh testified that Buhr "announced that IOMAXIS had converted the capital accounts of the IOMAXIS members (excluding decedent Ron Howard's capital account) into loans for the purpose of being able to make 'distributions' to the members of IOMAXIS but [to] call them loan repayments thereby avoiding having to make pro-rata distributions to [the Trust]." (Additional and Supp. Aff. Nicholas Hurysh, Jr. ¶ 8, ECF No. 244.5.)

20. Hurysh described the 22 July 2020 conference call as one in which "Buhr generally announced a complicated reorganization aimed at moving IOMAXIS from Texas to Delaware, changing the corporate form of IOMAXIS, and moving assets out of IOMAXIS into holding companies in various forms in order to protect these assets from claimants and, in particular, [the Trust]." (Hurysh 12 July 2021 Aff. ¶ 8, ECF No. 395.6.) The plan was to "setup [sic] one holding company for [IOMAXIS's] public stock and similar investments, another company for IOMAXIS'[s] private stock investments, and other holding companies to protect IOMAXIS'[s] other assets." (Hurysh 12 July 2021 Aff. ¶ 10.)

[4] Given these developments, Plaintiffs agreed to continue the hearing on the Motion to Appoint Receiver. (Order Following Hearing, ECF No. 150.)

21. Hurysh testified that the "primary purpose for the restructuring of the company was two-fold: 1. to move assets out of the reach of the estate during the pendency of this litigation and 2. to convert capital contributions of all owners (except the Estate) to loans thereby allowing Defendant Buhr to pay himself and the other Individual Defendants distributions from IOMAXIS, but to label these distributions as a repayment of loans thereby avoiding the legal obligation to make these payments to all owners pro-rata (including the Estate)." (Aff. of Nicholas Hurysh, Jr. Opp. Mot. Prot. Order ["Hurysh Aff. Prot. Order"] ¶ 29, ECF No. 395.1.)

22. Hurysh also testified that Buhr stated that he wanted to get the reorganization done "before IOMAXIS and its members were deposed in this lawsuit." (Hurysh 12 July 2021 Aff. ¶ 9.)

23. Hurysh concluded that Buhr's "stated goal in setting up shell holding companies and moving assets into these companies was to prevent claimants that might sue IOMAXIS, specifically including the Estate of Ron Howard, from getting to IOMAXIS's assets." (Hurysh 12 July 2021 Aff. ¶ 11.)

24. Because an attorney participated in the conversations on 22 July 2020, IOMAXIS objected to disclosure of the contents of that call on privilege grounds. This Court ruled that the privilege had been waived, and IOMAXIS appealed. Consequently, discovery with respect to Hurysh's allegations of diversion and fraud

was stayed while the Supreme Court considered IOMAXIS's appeal. (Order Mot. Sever and Stay, ECF No. 283.)[5]

25. Following the Supreme Court's decision on the attorney-client privilege issue in June 2023, the 22 July 2020 Transcript was released to Plaintiffs. (Tr. Zoom Meeting July 20, 2020 ["22 July 2020 Tr."], ECF No. 400.) They now point to the content of both recordings, as well as to Hurysh's testimony, as evidence to support their contention that Buhr, leading the rest of the IOMAXIS Defendants, developed a scheme to distribute money to IOMAXIS's members to the exclusion of the Trust, and that he has been spearheading the transfer of assets out of IOMAXIS to third parties to devalue the Trust's economic interest.

26. During the 17 July 2020 teleconference, Buhr discussed plans to sell some of IOMAXIS's assets and preserve others in another company. He stated:

> So let's say that we take some of our investment in stock and move to another account. When we sell the company, we won't be selling that company, right? So that the money that we accumulated in investments will be in another company that we will still enjoy. Right? So that's another critical point too. So you'd be selling, let's say, IOMAXIS, but you're not selling all of the assets of IOMAXIS because we've moved those into a separate LLC or a separate company. And so that money would stay with us, even after a sale.

(Add. and Supp. Aff. of Nicholas Hurysh, Ex. B ["17 July 2020 Tr."] 27:8-19, ECF No. 244.5.).

27. In the 22 July teleconference, Buhr, Spade, Griffin and Burleson discuss a plan to create a holding company and move the IOMAXIS members' ownership to

[5] Meanwhile, a transcript of the 17 July 2020 teleconference, which did not involve an attorney was produced. (Add. and Supp. Aff. of Nicholas Hurysh, Ex. B ["17 July 2020 Tr."], ECF No. 244.5.)

that company to insulate them from "disagreement" and allow them "to take out any business assets of IOMAXIS and distribute them to the holding company . . . separately from IOMAXIS[.]" (22 July 2020 Tr. 19:23-20:3.) Buhr stresses in the recording that he wants to transfer ownership within the next thirty days because "there are some things we [the IOMAXIS Defendants] have to move out. Like the stock, and some of these other investments should move out to another company. . . and then we have to take a look at, do we move something else?" (22 July 2020 Tr. 22:6-12.) Buhr also "strongly recommend[ed]" that:

> any of our investments move over to another company. . . . One is a holding company for, like, stock, and investments, and CDs, or whatever . . . And then the next [entity] would be, where is our ownership and holdings of other companies we've maybe invested in that we still have share—some shares in. . . . So we would move that ownership over to another holding company as well.

(22 July 2020 Tr. 34:2-23.) He explains his reasoning:

> So, an example would be, if something happens to me, the dividends and the stock and the other things are at this entity over here. We're not liquidating that. But more importantly, if someone sues us, they don't have the ability to reach in to try to grab those asset[s], which the other thing I'm less worried about is not something happening to me, more or less, is that we are sued and we lose everything because someone sues us. You can see that's part of the concern I have with the [Howard] estate, right?

(22 July 2020 Tr. 34:25 -35:9.)

28. The 17 July 2020 transcript also contains a discussion of a plan to convert the members' capital accounts to loans and then repay the loans rather than declare distributions. (17 July 2020 Tr. 17:15-18:20, ECF No. 244.5.) According to

Buhr, this plan would allow him to "still say to the estate that we never took a distribution, other than for taxes, which would be correct." (17 July 2020 Tr. 19:1-10.)

29. Buhr also counseled the IOMAXIS Defendants to avoid communicating "about distributions or taxes" on email because "then that becomes discoverable by the court[.]" (17 July 2020 Tr. 51:19-21.) He instructed:

> So I just want us to be – when we're sending communications out about money and distributions and loans and stuff like that, I don't want it to be via email . . . . Maybe there's some other way for us to do it that's encrypted. Proton is one of those emails where it disappears after 24 hours.

He ultimately tasked Hurysh with the responsibility of finding a communication means that would make the messages "disappear." (17 July 2020 Tr. 52:5-54:7.)

30. Additionally, Buhr, IOMAXIS's manager, referenced corporate opportunities with Cisco and Dell that he does not want "to be IOMAXIS." (22 July 2020 Tr. 36:8-11.)

31. After Hurysh provided the testimony above, on 16 September 2020, IOMAXIS terminated his employment. (Hurysh Aff. Prot. Order ¶ 51.) He complains that "IOMAXIS then created a false valuation of my membership interest based on fraudulent and inaccurate financial information and purported to buy-out my membership interest for an amount less than its actual value." (Hurysh Aff. Prot. Order ¶ 60.) Hurysh claims that when he objected and demanded to see the financial information on which the valuation of his interest was based, IOMAXIS refused. (Hurysh Aff. Prot. Order ¶ 61).

IOMAXIS Becomes MAXISIQ, Inc, a Subsidiary of FiveInsights, LLC

32. Since the July 2020 recorded teleconferences occurred, IOMAXIS has undergone significant changes. It became a Delaware LLC, MAXISIQ, LLC, on 21 August 2020 and adopted a new operating agreement. (Delaware Petition ¶¶ 35, 37-38.) MAXISIQ, LLC converted to a Delaware corporation, MAXISIQ, Inc., on 31 March 2023. (Delaware Petition ¶ 48.)

33. On 22 April 2021, Defendants Spade, Buhr, Griffin and Burleson formed Five Insights, LLC ("Five Insights"), a management services company, to operate MAXISIQ, Inc (herein "IOMAXIS") and other entities. (Delaware Petition ¶¶ 40-42; Dep. of Brad Buhr ["Buhr Dep"] 35:17-21, ECF No. 388.4.) Spade, Buhr, Griffin, and Burleson then conveyed their membership interests in IOMAXIS to Five Insights in exchange for like membership interests in Five Insights. (Delaware Petition ¶ 44.) Plaintiffs argue that they were unaware of these developments. (Pls.' Br. 1-3.)

34. Thus, ownership, management, and control of IOMAXIS has been transferred to Five Insights, which is owned by Buhr, Spade, Griffin, and Burleson, and controlled by Buhr. (Buhr Dep. 14:10–19, 15:1–19, 35:17–19, 133:20–23, 134:4–6.) The former members of IOMAXIS are now members of Five Insights, while the Trust remains a purported economic interest holder in IOMAXIS. (Buhr Dep. 151:23-152:13.)

35. On 1 May 2023, at Buhr's direction, Five Insights sold Ingressive, a business unit of IOMAXIS that performs "Red Team"[6] services, to Millennium

[6] Red Team service providers imitate threats to a customer's cybersecurity infrastructure to determine structural weaknesses and improve a customer's internal cyberattack response.

Corporation on terms that, to date, have not been disclosed to Plaintiffs. (Buhr Dep. 57:14-58:1, 58:16–18, 60:9–22; Griffin Dep. 131:15-18, ECF No. 338.5.) Buhr testified that, as the managing member of Five Insights, he had authority to sell Ingressive without involving either Five Insights' other members or the Trust. (Buhr Dep. 60:23-61:12.)

36. Spade testified that he was not aware of the Ingressive sale until a month after it occurred. (Dep. of John Spade, Jr. ["Spade Dep."] 37:25-38:2, ECF No. 388.3.) Griffin testified that he could not recall a specific meeting or discussion about the sale. (Griffin Dep. 132:18-21.) In addition, none of the IOMAXIS Defendants notified the Trust of the sale. It only learned of the sale in response to its counsel's questioning during Buhr's deposition. Further, the Trust has received no distribution or other monetary benefit from the sale. (Pls.' Am. and Restated Br. Supp. Am. Mot. Appt. Rec. 3, ECF No. 331.)

37. In his deposition, Buhr testified only that the sale of Ingressive involved "[m]ultiple contracts" with "[n]o estimated value[.]" He refused to divulge the sales price due to an "NDA and a secrecy agreement," but stated that the sales price for Ingressive depended "on the next 60 days, what novates as contracts and what doesn't." (Buhr Dep. 58:12-20; 62:16-63:1; 63:18-21.)

38. Plaintiffs allege that the creation of Five Insights and the subsequent sale of Ingressive through Five Insights is part of the plan discussed in the July 2020

See Red Team, Comput. Sec. Res. Ctr., https://csrc.nist.gov/glossary/term/Red_Team (last visited Jan. 25, 2024).

recorded telephone conferences to disguise distributions and devalue the Trust's economic interest in IOMAXIS. (Pls.' Am. Mot. Appoint Receiver 3, ECF No. 330.)

39. In addition, in his deposition, Spade testified that he believes that the IOMAXIS members' capital accounts have been converted to loans but, to his knowledge, no dividends have been paid out. (Spade Dep. 114:22-115:3.)

40. Buhr testified that the Trust "has no economic interest" and he does not "have to treat the Trust honorably." (Buhr Dep. 44:12-13; 61:21-22.) His testimony reflects a callousness toward IOMAXIS's obligations with respect to a purported 51% economic interest holder. (*See also* Buhr Dep. 62:5-7 ("Q. "So you believe it would be perfectly within your rights to sell off the company bit by bit until there's nothing left?; A. "Yes - - - ").)

41. Given these developments, and with the attorney-client privilege issues involving the July 2020 recorded telephone conference calls decided, the Plaintiffs amended and refiled their request for a receiver on 31 July 2023. They allege that the IOMAXIS Defendants have "renewed and intensified efforts to waste, hide, diminish, and dispose of" IOMAXIS's assets through the creation of Five Insights and the sale of Ingressive. (Pls.' Am. and Restated Br. Support Am. Mot. Appoint Receiver 3, ECF No. 331.)

42. The IOMAXIS Defendants initially did not file a response to the Motion but instead relied on their 2021 briefs opposing the motion to appoint a receiver. (*See* IOMAXIS's Opp. Mot. Appoint Receiver, ECF No. 112; IOMAXIS's Reply Opp. Hurysh's Receiver Resp., ECF No. 143.)

43. On 13 November 2023, the Court held a hearing on the Motion during which the parties were present and were heard, (ECF No. 370). As a result of the parties' positions presented at the hearing, and to facilitate resolution of the Motion, the Court, in the exercise of its discretion, entered a Scheduling Order permitting Plaintiffs to serve IOMAXIS with finance-related discovery requests that were reasonably calculated to lead to the discovery of admissible evidence relating to the Motion. IOMAXIS was given thirty days to respond.[7] Within seven (7) days of receipt of IOMAXIS's responses, Plaintiffs were afforded the opportunity to file either (i) a notice withdrawing the Motion, or (ii) a supplemental brief in further support of the Motion. Any such supplemental brief was to address, *inter alia*, any alleged failure on the part of IOMAXIS to respond fully and completely to Plaintiffs' discovery requests and to identify with specificity any prior discovery requests covering the same information that Plaintiffs contend have not been answered. Within seven (7) days of service of a supplemental brief filed by Plaintiffs, IOMAXIS was permitted to file a responsive brief. (Scheduling Order, ECF No. 384.)

44. On 22 November 2023, Plaintiffs served their discovery requests in accordance with the Scheduling Order. IOMAXIS responded on 22 December 2023. According to Plaintiffs, IOMAXIS refused to produce a single document to the Trust.[8]

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[7] The Court's initial order afforded IOMAXIS ten days to respond. The period was extended to thirty days on IOMAXIS's motion. (Order on IOMAXIS's Motion to Modify Scheduling Order, ECF No. 390.)

[8] IOMAXIS stated that it is willing to provide some financial information, not to Plaintiffs in discovery, but to a third party "with sufficient qualifications to assess the information." It offers to provide a third party neutral (1) the identity of every person or entity who meets the Trust's definition of Insider and who sent or received transfers to or from IOMAXIS; (2) details about every transaction between IOMAXIS and a related person or entity; (3) a balance sheet for the last day of each year; (4) a list of and a copy of all fourteen contracts

(Pls.' Supp. Br. Supp. Am. Motion Appoint Receiver ["Pls.' Supp. Br."] 2, Ex. A, ECF Nos. 404, 405.1.) Plaintiffs contend that this is just the latest in a series of refusals by the IOMAXIS Defendants to provide the financial information sought by the Trust, particularly financial information dated after Ron Howard's death in June 2017. (Pls.' Supp. Br. 3.)

45. Plaintiffs complain that for the duration of this litigation so far, and despite their repeated efforts, IOMAXIS has steadfastly refused to produce materials concerning (a) valuation of IOMAXIS or its assets, (b) IOMAXIS's member compensation, (c) actual or contemplated transfers of IOMAXIS's assets, (d) the identity of parents or subsidiaries of IOMAXIS, (e) documents provided to third parties reflecting annual revenues or contracts, or (f) a native detailed general ledger and subsidiary ledgers. (Pls.' Supp. Br. 6-7.)

46. Recently, Plaintiffs moved to compel responses to their discovery requests. (Motion to Compel IOMAXIS' Financials (N.C. R. Civ. Pro. 37(a)), ECF No. 411.) The time for the IOMAXIS Defendants to respond to that motion has not expired. However, Plaintiffs contend that the IOMAXIS Defendants' failure to produce the requested information to this point strongly indicates that they have no intention of producing the financial information sought. They argue that IOMAXIS's actions confirm that "it does not matter when or how [discovery] requests are

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that were "assigned or novated" to any person who meets the Trust's definition of Insider; and (5) closing documents for the Ingressive transaction. And even though the Trust did not ask for them, IOMAXIS says that it would also give the third-party accountant copies of IOMAXIS's audited 2022 financial statements. (IOMAXIS Defs.' Supp. Br. Opp. Motion for Receiver ["IOMAXIS Defs.' Supp. Br."] 6, ECF No. 408; Pls.' Supp. Br. Ex. A.)

formulated, or if they are relevant, reasonable, and narrowly tailored. Defendants will continue to assert baseless objections and pursue any and all means to prevent discovery of these documents." (Pls.' Supp. Br. 10.) The Court will address the motion to compel by separate order.[9]

47. In this Motion, Plaintiffs seek the appointment of a receiver to prevent what they argue are continued efforts to "transfer assets out of IOMAXIS, create holding companies, restructure, and take other actions designed to hinder, delay, and defraud the Trust." (Pls.' Supp. Br. 10-11.) Plaintiffs contend that, particularly because the IOMAXIS Defendants have resisted their discovery efforts, appointment of a limited receiver is necessary to be the "eyes and ears" of the Court and to protect its interests during the pendency of this litigation. (Pls.' Supp. Br. 13.)

48. The IOMAXIS Defendants argue that Plaintiffs must satisfy the Court that they are entitled to injunctive relief before the appointment of a receiver is appropriate. They maintain that Plaintiffs have not shown that they have a reasonable likelihood of success on the merits of any of their claims. (IOMAXIS Defs.' Supp. Br. Opp. Mot. Receiver 15-17, ECF No. 408.)

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[9] The Trust's position appears to be borne out by the first paragraph of the IOMAXIS Defendants' supplemental brief. The IOMAXIS Defendants stand on their position that the Trust has no right to discover any information regarding IOMAXIS's finances after Ron Howard's death on 12 June 2017. (IOMAXIS Defs.' Supp. Br. 1.) Furthermore, they argue that, because the Trust does not have statutory information rights, their refusal to provide this information cannot support the appointment of a receiver to ensure that IOMAXIS's assets are not being improperly diverted. The Court has already stated that Plaintiffs have statutory rights to discover information reasonably likely to lead to admissible evidence. (See Order on Mot. Compel 4-5, ECF No. 410.) It will address the IOMAXIS Defendants' compliance with discovery rules by separate order. Here, the Court determines only whether, on the record before it, the appointment of a receiver is necessary to perform functions assigned to ensure that IOMAXIS's assets are safeguarded during the pendency of this litigation.

49. On the other hand, Plaintiffs contend that they have presented evidence sufficient to show the following:

> (1) the Trust has substantial rights in the assets or property of IOMAXIS as a 51% economic interest holder; (2) its rights may be lost, prejudiced, or less than adequately protected during the pendency of litigation unless something is done to restrain the Defendants; (3) there is evidence of fraud or gross misconduct in the management of IOMAXIS, such as falsification of documents; (4) there is evidence of diversion of corporate funds by IOMAXIS or the Defendants and an ongoing effort by the Defendants to withhold financial information which would shed light on these diversions, including payment of disguised distributions; (5) there is evidence IOMAXIS has refused to permit inspection of its corporate books. . . in this case when there have been known transfers to insiders and other suspicious transactions involving IOMAXIS assets; and (6) there is evidence of transfers of IOMAXIS's assets with intent to hinder, delay, or defraud the Trust, including the transfers to Five Insights.

(Pls.' Supp. Br. 11-12, internal quotation marks deleted.)

50. Having carefully reviewed the parties' briefs and supplemental briefs, and having heard from the parties in two hearings, the Motion is ripe for resolution.

II. CONCLUSIONS OF LAW

51. The appointment of a receiver is an extraordinary remedy. *See e.g., Neighbors v. Evans*, 210 N.C. 550. 554 (1936). For that reason, North Carolina courts will not appoint a receiver unless the movant can show a likelihood of success on the merits of one or more of its claims. *Id.*; *759 Ventures, LLC v. GCP Apt. Inv'rs., LLC*, 2018 NCBC LEXIS 44, at *8 (N.C. Super. Ct. May 9, 2018) (stating that a receiver's appointment "is contingent upon first reaching a determination that [the moving party] will likely succeed on the merits of its claim[.]").

52. But the requirement that the moving party show a likelihood of success on the merits is not tantamount to requiring the moving party to establish that it is entitled to summary judgment. Likelihood of success means a "reasonable likelihood[.]" *A.E.P. Indus., Inc. v. McClure* , 308 N.C. 393, 404 (1983). At this stage, the evidence need not be conclusive. *See York v. Cole*, 251 N.C. 344, 344-45 (1959) (affirming appointment of receiver on the strength of plaintiff's complaint, supplemented by her affidavit, which the Court found sufficient "to support a finding that plaintiff had established an apparent right to the property, and if the property were left in defendants' possession, plaintiff was in danger of losing the rents and profits.").

53. Pursuant to Section 1-502 of the North Carolina General Statutes, a receiver may be appointed "[b]efore judgment . . . when the party establishes an apparent right to property that is the subject of the action and in the possession of the adverse party, and the property or its rents and profits are in danger of being lost or materially injured or impaired[.]" N.C.G.S. § 1-502.

54. Similarly, under the North Carolina Commercial Receivership Act ("NCCRA"), a receiver may be appointed before judgment:

> to protect a party that demonstrates an apparent right, title, or interest in property . . . if the property or its rents and profits is being subjected to or is in danger of waste, loss, dissipation, or impairment, or has been or is about to be the subject of a voidable transaction.

N.C.G.S. § 1-507.24(c).[10] In addition, a receiver may be appointed "in other cases as provided by law and equity." N.C.G.S. § 1-507.24(g).

55. In addition to the statutory bases for appointing a receiver, the Court has the inherent authority to do so. *See Lambeth v. Lambeth*, 249 N.C. 315, 321 (1959) ("Courts of equity have original power to appoint receivers and to make such orders and decrees . . . as justice and equity may require."); *Sinclair v. Moore Central Railroad Co.*, 228 N.C. 389, 395 (1947) ("The power of the court to appoint a receiver . . . is one of the inherent powers of a court of equity."); *Barnes v. Kochhar*, 178 N.C. App. 489, 500 (2006) ("[A] court of equity has the inherent power to appoint a receiver, notwithstanding specific statutory authorization." (cleaned up)); *Konover v. Pantlin*, 2019 NCBC LEXIS 102, at *7 (N.C. Super. Ct. Dec. 5, 2019) ("The Court holds powers regarding receivership beyond those granted by statute because receivership is an equitable remedy."). However, if the entity is a going concern and the evidence does not support a conclusion that it is in danger of insolvency, appointment of a receiver is usually reserved for "rare and drastic situations." *Williams v. Liggett*, 113 N.C. App. 812, 816 (1994).

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[10] The Uniform Voidable Transactions Act (UVTA), N.C.G.S. § 39-23.1 *et seq.*, defines a voidable transaction to include one made by a debtor "with intent to hinder, delay, or defraud any creditor of the debtor." N.C.G.S. § 39-23.4(a). When determining if a debtor made, or is about to make, a transfer with the intent to "hinder, delay, or defraud" a creditor, courts examine a nonexclusive list of thirteen "badges of fraud." These factors include (1) whether the transfer was to an insider; (2) the debtor's control or possession of the property after the transfer; (3) whether the transfer or obligation was disclosed or concealed; (4) whether the debtor faced the threat of litigation or was being sued before the transfer occurred; (5) whether the debtor removed or concealed assets; and (6) whether the transfer occurred shortly before or after a substantial debt was incurred. No particular factor or number of factors is required; the totality of the circumstances dictates whether there is sufficient evidence of fraudulent intent to void the transaction. *See* N.C.G.S. § 39-23.4, cmt. 6 (2014).

56. Our courts have found such situations to exist when there is evidence of corporate malfeasance. *See, e.g.*, *Konover,* 2019 NCBC LEXIS 102, at *8 (appointing a receiver because the plaintiffs engaged "in conduct that is in flagrant violation of [members'] rights under the Operating Agreement"); *Battles v. Bywater, LLC*, 2014 NCBC LEXIS 54, at *19 (N.C. Super. Ct. Oct. 31, 2014) (appointing receiver "in light of . . . persisting management deadlock . . . and the accusations of corporate mismanagement and malfeasance each [party] has made against the other."); *Barnes*, 178 N.C. App. at 499 (finding immediately appealable the trial court's *denial* of receiver over solvent corporation in the face of "concrete examples of irreparable harm" including asset depletion, transfers of corporate property, and misuse of corporate assets). Receivers have also been appointed when there is a lack of transparency with respect to financial information. *See Lowder v. v. All Star Mills, Inc.*, 301 N.C. 561, 577 (1981) (appointment of receiver is a proper remedy where there is "fraud or gross misconduct in the management of the corporation; where there is incapacity or neglect on the part of those operating it; where there is evidence of diversion of corporate funds; and even where there is a refusal to permit inspection of corporate books, at least when such a refusal occurs in combination with the existence of other grounds." (cleaned up)); *Blueprint 2020 Opportunity Zone Fund, LLLP v. 10 Academy Street QOZB 1, LLC*, 2023 NCBC LEXIS 49, at *11-13 (N.C. Super Ct. Mar. 9, 2023) (appointing a receiver to investigate due to substantial evidence of improper self-dealing, dramatic reduction of corporate cash assets without explanation, and failure to respond to members' request for information).

But see 759 Ventures, 2018 NCBC LEXIS 44, at *13 (denying motion to appoint a receiver because while corporate management "isn't perfect[,]" the parties continued to make efforts to resolve their dispute).

57. Here, Plaintiffs contend that, for years, IOMAXIS has paid the individual defendants disguised distributions and not included the Trust.[11] Hurysh testified that Buhr and others have been profiting from improper transfers since 2015, and that they have developed a strategy for continuing these transfers, to the exclusion of the Trust, as evidenced by the July 2020 telephone conference calls. After those calls, the IOMAXIS Defendants set up a new entity, Five Insights, to take control of IOMAXIS, and they exchanged their interests in IOMAXIS for like interests in Five Insights. The Trust was not invited to do the same. Five Insights has now sold IOMAXIS's assets without explaining what happened to the proceeds from the sale.

58. In addition, the IOMAXIS Defendants have plans to develop additional entities and to move more of IOMAXIS's investments and other assets. Plaintiffs have also presented evidence that the individual IOMAXIS Defendants have converted their capital accounts in IOMAXIS to loans so that they could receive "loan

[11] The IOMAXIS Defendants question the Trust's standing to assert its claims. However, the Court concludes that, at this stage, the evidence is sufficient to support the Trust's assertion that it has standing for purposes of this Motion. It is undisputed that Ron Howard died on 12 June 2017. Three days later, on 15 June 2017, his executor notified the IOMAXIS Defendants of Howard's death. It was not until 20 September 2017, however, that Buhr sent a Notice to the Estate purporting to exercise what he characterized as the company's "option to purchase the Interest formerly held by Ronald Howard." (Notice, ECF No. 360.3.) Consequently, the thirty-day period for IOMAXIS's members to elect the purchase option afforded by the N.C. Operating Agreement had expired before the Notice was sent, and the Howard Estate was free to transfer the interest to the Trust.

repayments" – a plan to which the Trust, despite its claim to a 51% economic interest, has not been privy. Indeed, Buhr has instructed the IOMAXIS Defendants to correspond about "money and distributions and loans and stuff" in a way that is not "discoverable by the court."

59. Particularly when this evidence is combined with the IOMAXIS Defendants' adamance that Plaintiffs are not entitled to review post-June 2017 financial information, and Buhr's seeming disregard for the Trust as expressed in both the July 2020 recorded telephone conferences and his deposition testimony, the Court concludes that Plaintiffs have shown that there is a reasonable likelihood that they will succeed on their claims sounding in fraud.[12] *See Lowder*, 301 N.C. at 577 (stating that the appointment of a receiver is proper "where there is fraud or gross misconduct in the management of the corporation, where there is incapacity or neglect . . . where there is evidence of diversion of corporate funds, and even when there is refusal to permit inspection of corporate books[.]" (citations omitted)).

60. As a purported 51% economic interest holder, the Trust has substantial rights in the assets of IOMAXIS. It has presented evidence that, without a receiver, those rights may be adversely impacted during the pendency of litigation. The Court thus concludes that it is both necessary and appropriate to appoint a receiver over IOMAXIS on an interim basis to perform certain limited duties.

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[12] It would be an odd result were the Court to require that the Plaintiffs present even more evidence in order to show a likelihood of success on the merits of their fraud claims when the reason the Motion is before the Court is that Plaintiffs do not believe the IOMAXIS Defendants have been forthcoming in discovery, limiting their ability to discover facts.

The Finley Group

61. In support of their Motion, Plaintiffs have submitted the Affidavit of Matthew W. Smith, Managing Director of the Finley Group, ("Mr. Smith"). (Aff. of Matthew W. Smith ["Smith Aff."], ECF No. 402.) The Finley Group and Mr. Smith (together, the "Receiver") have agreed to serve as the Receiver in this matter and agree to accept compensation at the following rates (plus reasonable expenses):

Receiver: $495.00 per hour;

Managing Directors: $425.00–495.00 per hour;

Senior Directors: $350.00–400.00 per hour;

Directors: $275.00–325.00 per hour; and

Financial Analysts: $200.00–250.00 per hour

(Smith Aff. ¶ 20.) The Court, having reviewed the factors set forth in N.C.G.S. § 1-507.31, finds this compensation to be reasonable.

62. Since 1985, Finley Group has provided comprehensive business management, financial, and consulting services for companies in a broad range of industries. Their services include business assessment and strategic planning, case management and forecasting, corporate level interim management, enterprise value analysis and enhancement, forensic accounting, and liquidation, dissolution, or restructuring initiatives. (Smith Aff. ¶ 4.) Finley Group has extensive experience servicing as a receiver and officer of the court. (Smith Aff. ¶ 5.) In addition, Finley Group has extensive experience in bankruptcy cases serving as Chapter 11 Trustee and in various capacities as financial advisor to creditors and debtors, as Chief

Restructuring Officer, Chief Liquidation Officer, and Chief Financial Officer. (Smith Aff. ¶ 6.)

63. The Court concludes that Finley Group has the capacity and capability to act as a receiver in this case. Mr. Smith represents that Finley Group will accept such an appointment. (Smith Aff. ¶ 9.)

64. To the extent the Receiver's duties require a review of confidential business information, Finley Group personnel shall be required to agree to the terms of the Protective Order entered in this action. (*See* Prot. Order, ECF No. 20, as amended, ECF No. 45.)

65. Finley Group does not have a relationship with any party in interest, has no interest materially adverse to the interests of any party in interest, and has no material financial or pecuniary interest (other than receiver compensation) in the dispute. (Smith Aff. ¶¶ 16-17.)

66. Finley Group is not a debtor, secured or unsecured creditor, lienor of, or holder of any equity interest in, any party in interest or of receivership property. (Smith Aff. ¶ 18.)

67. Neither Finley Group as an entity, nor any of the individuals performing services related to the receivership established herein has ever been convicted of a felony or other crime involving moral turpitude, nor have they ever been found liable in a civil court for fraud, breach of fiduciary duty, civil theft, or similar misconduct. (Smith Aff. ¶¶ 13-14.)

68. Finley Group has not participated in any action that constitutes a violation of N.C.G.S. § 23-46. (Smith Aff. ¶ 19.)

69. Finley Group and Mr. Smith, as Finley Group's agent, are qualified to serve as Receiver for this matter in accordance with N.C.G.S. § 1-507.25 of the NCCRA.

70. In sum, the Court concludes that Finley Group is knowledgeable and experienced in handling receivership matters, independent as to any party in interest, and does not have an interest in the matter. Accordingly, Finley Group shall be appointed as Receiver over IOMAXIS on an interim basis with the limited powers and authority set forth herein.

III. ORDER

WHEREFORE, based on the foregoing findings of facts and conclusions of law, the Court, in its discretion, hereby **GRANTS** the Motion and **ORDERS** as follows:

71. Effective upon entry of this Order, Finley Group, and Mr. Smith as Finley Group's agent, are appointed as Receiver for IOMAXIS. Mr. Smith, as Managing Director of Finley Group, and as Finley Group's agent, has consented to his identification by the parties as an individual who is qualified, willing, and able to serve as an officer of the Court.

72. The Receiver shall serve for an initial term of six (6) months and shall be subject to reappointment by the Court for an additional period of six (6) months upon motion.

73. The Receiver's duties shall include:

a. Reviewing any of IOMAXIS's books, records, accounts, and any other business information necessary to satisfy the Receiver's reporting requirements;

b. Investigating planned or actual transfers of IOMAXIS's assets in excess of $100,000.00 (aggregated annually beginning 1 January 2023), to any person or entity; to include determining the identity of the asset(s), the identity of the recipient(s), whether fair value was received for the transfer, and the disposition of any proceeds received;

c. Ascertaining the terms of the sale of IOMAXIS's Ingressive Division to Millennium, to include the value received and/or promised and the disposition of that value;

d. Ascertaining the terms of any agreement between IOMAXIS and Five Insights, and identifying the amount and purpose of any funds transferred from IOMAXIS to Five Insights;

e. Identifying any entity formed by any of the IOMAXIS Defendants or formed by an entity that was formed by any of the IOMAXIS Defendants;

f. Within thirty (30) days of the entry of this Order, and continuing every thirty (30) days thereafter, submitting a report to the parties and the Court regarding the above, as well as: (i) the suitability, quality, and accuracy of the financial and accounting records of IOMAXIS; (ii) the financial status of IOMAXIS including whether IOMAXIS is or appears

to be insolvent or in imminent danger of insolvency or whether there is evidence of mismanagement; and (iii) the compensation, distribution, dividend, or other benefit afforded any insider (as defined by N.C.G.S. § 1-507.20(b)(16)).

74. Upon motion by the receiver, or any party in interest, or at such times as the Court may deem appropriate, the Court shall schedule status conferences to review the status of the receivership.

75. The Receiver shall, during the pendency of this action, have the right to apply to this Court for further instructions, directions, or authority.

76. IOMAXIS, including its manager, shall have all the duties provided for under N.C.G.S. § 1-507.30, including the obligation to:

a. Assist and cooperate fully with the Receiver in the administration of the receivership and the discharge of the Receiver's duties and to comply with all rules and orders of the Court;

b. Make available to the Receiver, promptly upon the Receiver's appointment, the financial records and other receivership property in IOMAXIS's possession, custody, or control;

c. Supply to the Receiver information as requested relating to the administration of the receivership and the receivership property, including information necessary to complete any reports or other documents that the Receiver is required to file with the Court; and

d. Remain responsible for the filing of all tax returns and other financial documents with governmental organizations, including those tax returns applicable to periods which include those in which the receivership is in effect, except as otherwise ordered by the Court.

77. Each officer, director, manager, member, partner, trustee, or other person exercising or having the power to exercise control over or affect the affairs of IOMAXIS (collectively, the "Responsible Parties") shall promptly comply with N.C.G.S. § 1–507.30(b) and shall perform the duties set forth therein, in addition to those duties otherwise conferred by statute or order of the Court, shall reasonably cooperate with the Receiver in the administration of the receivership and are hereby enjoined from knowingly interfering with the Receiver or its duly appointed agents or representatives in connection with the investigation and analysis prescribed herein, and from interfering with the operations of the Receiver as herein authorized.

78. In accordance with their obligations under N.C.G.S. § 1-507.30, the Responsible Parties are hereby **ORDERED** to provide to the Receiver no later than seven (7) days after the entry of this Order documentation regarding all actual or planned transfers involving IOMAXIS's funds or other assets valued in excess of $100,000.00 (aggregated annually) from the 1 January 2023 until 31 December 2024. The documentation shall, at a minimum, identify the following: (a) date; (b) amount; (c) person(s) to whom funds or other assets have been or will be transferred; (d) the basis for the transfer; and (e) whether the identified person or entity is related to or affiliated with any of the Responsible Parties (and if so, which one(s)). The

Responsible Parties shall promptly respond to any follow-up inquiries from the Receiver regarding the Receiver's investigation.

79. Upon request by the Receiver, the Responsible Parties are further **ORDERED** to make available to the Receiver for purposes of the discharge of his duties all books and records, electronic data, access codes or passwords, statements of accounts, deeds, titles, or other evidence of ownership, financial statements, financial and lien information, bank account statements, bank accounts, deposits, tax returns, checkbooks, ledgers, accounts payable and accounts receivable records, contracts, agreements, invoices, and all other papers and documents related to the financial operations of IOMAXIS (collectively, the "Financial Property"). This obligation of the Responsible Parties to turn over Financial Property to the Receiver shall be ongoing and shall apply equally to any Financial Property of IOMAXIS that the Responsible Parties receive or obtain after the entry this Order.

80. The Receiver is authorized to serve this Order on all the financial institutions that maintain any of IOMAXIS's bank accounts (or its agents holding funds) or with whom IOMAXIS has a lender/borrower relationship, and any such financial institution and any other persons in active concert or participation with IOMAXIS shall take such steps as are necessary to promptly provide the Receiver with necessary Financial Property within their possession as requested by the Receiver. Any financial institution maintaining IOMAXIS's bank accounts shall upon the Receiver's request provide to the Receiver a complete listing of account numbers. For each such account, the financial institution shall upon the Receiver's

request promptly provide the Receiver the current balance for each account and monthly bank statements (and details of any such transactions as requested) for a period of up to six (6) months after entry of this Order.

81. The Receiver may employ accountants, attorneys, and other professionals as reasonably necessary to assist in carrying out its duties, pursuant to N.C.G.S. § 1-507.31.

82. In accordance with N.C.G.S. § 1-507.31(b), and subject to any procedural safeguards and reporting the Court may subsequently order, the Receiver and any other professionals retained to provide services to the receivership are to be paid from the receivership. IOMAXIS shall fund the receivership, absent any further orders from this Court to the contrary.

83. The Receiver's fees and expenses shall be paid following notice to all parties to this action and approval of such fees and expenses by the Court, subject to N.C.G.S. § 1-507.51, pursuant to the following process:

a. The Receiver shall prepare, file, and serve request for payment, with invoices, for the Receiver's fees and expenses, within seven (7) days following the close of each month of the receivership period;

b. The Receiver's fees must be task-billed, with separate entries for each separate and individual task performed by any individual, the date of such task, a description of each task, the amount of time expended performing the task, and a designation of whether the task involves legal or non-legal services;

c. Any party wishing to object to the amount of the Receiver's invoice, or any entry therein, shall file and serve the written objection within four (4) business days following service of the Receiver's request for payment; and

d. The Court will enter an order regarding an award of fees and expenses after consideration of the request for payment and any written objections.

84. This Order shall be effective immediately upon entry.

85. The Receiver shall post a bond in the amount of $25,000.00 with the Mecklenburg County Clerk of Superior Court to secure its performance in this matter within seven (7) days of the entry of this Order. *See* N.C.G.S.§ 1-507.26(b). The Receiver shall promptly file a notice with the Court once the bond is posted.

86. The Receiver shall be deemed discharged upon an entry of an order discharging the Receiver; provided that as a condition precedent to discharge, the Receiver must have filed with the Court and served on all parties a final report satisfactory to the Court.

87. To the fullest extent allowed under applicable law, the Receiver and the employees, agents, accountants, and other professionals hired by the Receiver shall be entitled to all defenses and immunities provided by North Carolina law for all acts and omissions within the scope of the Receiver's appointment.

88. To the fullest extent allowed under applicable law, neither the Receiver nor the employees, agents, accountants, and other professionals hired by the Receiver

may be sued personally for any act or omission in administering receivership property without the approval of this Court, as set forth in N.C.G.S. § 1-507.27.

89. The Receiver may provide a copy of this Order to anyone who may be affected by its terms and provisions.

90. As a result of the limited nature of the receivership, the management of IOMAXIS shall remain vested in its current management, which the Court understands to be Five Insights. Notwithstanding Five Insights's role, financial outlays in excess of $100,000.00 that are outside the ordinary course of operations, including the expenditure of funds, the incursion of debt, and the distribution or other transfer of any assets, must be disclosed at least 72 hours in advance to the Receiver. The Receiver may, through counsel or otherwise, file with the Court, either on the public record or provisionally under seal in accordance with Business Court Rule 5.2, any documents reasonably necessary in the Receiver's opinion to alert the Court to activity by the Management of IOMAXIS that the Receiver believes is not in the best financial interest of IOMAXIS.

91. The Court shall retain jurisdiction to amend or modify this Order and to supervise all matters concerning the Receiver and the receivership.

SO ORDERED, this the 25th day of January, 2024.

/s/ Julianna Theall Earp

Julianna Theall Earp
Special Superior Court Judge
for Complex Business Cases