WP Church, LLC v. Whalen, 2026 NCBC Order 75.

STATE OF NORTH CAROLINA

MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
25CV028702-590

WP CHURCH, LLC, directly on behalf of itself and derivatively on behalf of 5CHURCH CHARLESTON, LLC,

Plaintiff,

v.

PATRICK WHALEN,

Defendant.

ORDER ON WP CHURCH, LLC'S AMENDED MOTION FOR APPOINTMENT OF RECEIVER

THIS MATTER is before the Court on Plaintiff WP Church, LLC's ("WP Church" or "Plaintiff") Amended Motion for Appointment of Receiver ("Motion," ECF No. 93 [Mot.]).

The Court, having considered the Motion, the briefs, the exhibits, the arguments of counsel, and all appropriate matters of record, **CONCLUDES** that the Motion should be **GRANTED** for the reasons set forth below.

INTRODUCTION

1. In this lawsuit, Plaintiff alleges that Defendant Patrick Whalen, the manager of 5Church Charleston, LLC ("5Church"), has misappropriated the company's funds for the benefit of his other restaurant ventures. Plaintiff obtained a preliminary injunction to prevent such conduct and asserts that Defendant has subsequently violated the terms of the injunction, thereby justifying the imposition of a receivership.

FINDINGS OF FACT

2. The Court's factual findings are made solely for purposes of deciding the present Motion and are not binding in any subsequent proceedings in this action. *See Couch v. ADC Realty Corp.*, 48 N.C. App. 108, 112 (1980).

3. 5Church is a South Carolina limited liability company that was formed in 2014 by, among others, Plaintiff and Defendant. (Verified Compl. ¶ 8, ECF No. 3 [Compl.]; Decl. Erik Johnson Supp. WP Church LLC's Mot. Prelim. Inj. ¶ 7, ECF No. 35.2 [Johnson Decl.].) In 2015, 5Church began operating Church and Union Charleston (CU Charleston), an upscale restaurant located in Charleston, South Carolina. (Compl. ¶ 8; Johnson Decl. ¶ 10.)

4. 5Church's members are Plaintiff, Defendant, Alejandro Torio, Dr. Maurice Whalen, and Jamie Lynch. (Compl. Ex. B, at Ex. A-1.) Jamie Lynch is CU Charleston's celebrity chef, and he "travels around the southeastern United States hosting and participating in culinary events while representing 5Church[.]" (Decl. Patrick Whalen ¶ 75, ECF No. 100.13 [Whalen Decl.]; Decl. Jamie Lynch ¶¶ 7–10, ECF No. 100.14.)

5. Plaintiff is a North Carolina limited liability company. (Compl. ¶ 6.) Plaintiff owns 35 membership units in 5Church.[1] (Compl. ¶ 8.)

6. Defendant is a citizen of North Carolina. (Compl. ¶ 7.) He owns 40 membership units in 5Church and is the company's sole manager. (Compl. ¶¶ 7–8;

[1] Plaintiff has alleged that it owns 35 of the 100 outstanding membership units in 5Church, but has also alleged that there are 108 outstanding membership units in that entity. (*See* Compl. ¶ 8; Compl. Ex. B, at Ex. A-1.)

Compl. Ex. A § 4.2 [Op. Agmt.].) Under 5Church's operating agreement, Defendant has broad discretion to control the company's affairs, including the power to unilaterally dispose of less than "all or substantially all" of its assets. (Op. Agmt. §§ 4.1–.3.)

7. Defendant is also an owner of Fifth Street Group, LLC ("5SG"), alongside Jamie Lynch, Alejandro Torio, Adam Hodgson, and Kristin Whalen. (Decl. R. Cory Rogers ¶¶ 31–32, ECF No. 100.1 [Rogers Decl.].) Kristin Whalen, Defendant's wife, is 5SG's general counsel. (Rogers Decl. ¶ 23.)

8. 5SG is 5Church's primary operator. (3d Decl. Patrick Whalen ¶¶ 3, 28, ECF No. 44.8 [3d Whalen Decl.].) 5SG has operated other restaurants in the United States, including Church and Union Charlotte ("CU Charlotte"), Church and Union Nashville ("CU Nashville"), Ophelia's, Tempest ("Pink Moon"), Church and Union Denver ("CU Denver"), and Church and Union Miami ("CU Miami") (collectively, the "Affiliate Restaurants"). (3d Whalen Decl. ¶¶ 28–30; Johnson Decl. ¶¶ 13–14.) Defendant has served as the sole manager of the Affiliate Restaurants. (Answer Compl. ¶ 21, ECF No. 86; Johnson Decl. ¶ 13.)

9. During 5Church's first few years of operations, it received funding in the form of loans from the Affiliate Restaurants, Defendant and his parents, and other investors. (3d Whalen Decl. ¶¶ 10–12, 57; Rogers Decl. ¶ 16.) All such loans from the Affiliate Restaurants were paid back, but a balance remains on the loan from Defendant and his parents ("Whalen Family Loan"). (3d Whalen Decl. ¶ 17; Rogers Decl. ¶¶ 16–17.)

10. On 10 June 2025, Plaintiff filed a Verified Complaint alleging that Defendant had misappropriated over $5 million of 5Church's assets to support the Affiliate Restaurants and another entity with which he is affiliated, Sophia's Lounge. (Compl. ¶¶ 3, 67, 76.) Plaintiff alleges the misappropriations began in 2020 and primarily occurred in the form of purported loans from 5Church to the Affiliate Restaurants. (Compl. ¶¶ 24, 26–29, 32.)

11. On 29 July 2025, Plaintiff filed a Motion for Preliminary Injunction requesting that the Court prohibit Defendant from transferring 5Church's assets outside of the ordinary course of business or to any entity he owns or controls. (ECF No. 34.) In response to that motion, Defendant filed a statement affirming that he treated 5Church and the Affiliate Restaurants' assets "as a central fund" to support the businesses during the COVID-19 pandemic, that 5Church "became the lifeline that kept its affiliates afloat[,]" and that 5Church was owed over $4 million in inter-company loans "as of the end of Q2 2025[.]" (3d Whalen Decl. ¶¶ 6, 25–27, 41.) Defendant also stated that, as 5Church's manager, he believed he had the authority to make the purported loans from 5Church to the Affiliate Restaurants. (3d Whalen Decl. ¶ 44.)

12. On 26 September 2025, the Court granted Plaintiff's motion and entered an order ("PI Order") prohibiting Defendant from: (i) "[t]ransferring, selling, or otherwise disposing of 5Church's funds or assets outside the ordinary course of business" and (ii) "[t]ransferring 5Church's funds or assets to any business or organization [Defendant] owns or controls." (Order WP Church, LLC's Mot. Prelim.

Inj. ¶ 91(a), ECF No. 53 [PI Order].)

13. On 19 May 2026, Plaintiff filed the present Motion seeking the appointment of BDO Consulting Group, LLC and its Managing Director, Ed Sanz, as a receiver for 5Church. (Mot. 1–2.) The Court held a hearing on the Motion on 4 September 2026 at which each of the parties was represented by counsel.

14. Plaintiff contends that the relief it requests is necessary to ensure Defendant's compliance with the PI Order and to prevent him from further dissipating 5Church's assets for his own benefit and for the benefit of his other businesses. (Mot. 1.) In support of this contention, Plaintiff argues that Defendant violated the PI Order through various transactions 5Church undertook in late 2025. (WP Church, LLC's Br. Supp. Mot. 2, 5–9, ECF No. 94 [Br. Supp.]; *see infra* ¶¶ 15–31.) Defendant contends that he did not intentionally violate the PI Order and disputes Plaintiff's characterization of the purported violations. (*See generally* Patrick Whalen's Br. Opp'n Mot., ECF No. 100 [Br. Opp'n].) The transactions at issue and the parties' relevant contentions are set forth below.

A. <u>Transfers to the Affiliate Restaurants</u>

15. On 1 October 2025, Defendant emailed his staff to instruct them to comply with the PI Order. (Br. Opp'n Ex. 2, ECF No. 100.2 ("It is my understanding that WE all now have been notified about the court order issued by Judge Davis. . . . [I]t will be each of your responsibly [sic] to read it, ask questions if you do not understand, and then to ensure that you and the people who work in your department are compliant.").) The following transactions subsequently occurred:

a. On 14 November 2025, 5Church sent $40,000 to LBH, LLC ("LBH"). On 17 November 2025, LBH sent $40,000 to 5Church.

b. On 26 December 2025, 5Church sent $5,000 each to CU Charlotte, LBH, and Ophelia's, and $20,000 to CU Nashville. On 29 December 2025, CU Charlotte, LBH, and Ophelia's each sent 5Church $5,000, and CU Nashville sent 5Church $20,000.

c. On 19 and 24 December 2025, Pink Moon sent a total of $20,000 to 5Church. On 31 December 2025, 5Church sent a total of $20,000 to Pink Moon.

d. On 12 and 24 December 2025, CU Charlotte sent a total of $25,000 to 5Church. On 31 December 2025, 5Church sent $25,000 to CU Charlotte.

e. On 12 December 2025, LBH sent $15,000 to 5Church. On 31 December 2025, 5Church sent $15,000 to LBH.

f. On 24 December 2025, Ophelia's sent $15,000 to 5Church. On 31 December 2025, 5Church sent $15,000 to Ophelia's.

g. On 22 December 2025, CU Denver sent $5,000 to 5Church. On 31 December 2025, 5Church sent $5,000 to CU Denver.

(Rogers Decl. ¶ 13.)

16. Plaintiff characterizes the transfers out of 5Church as clear violations of the PI Order. (Br. Supp. 5.) Defendant characterizes these transactions as a series of accidental and corrective transfers. (Br. Opp'n 13–16.)

B. Transfers in Repayment of the Whalen Family Loan

17. The Whalen Family Loan began to be repaid in 2017 with principal reductions occurring through 2020 and resuming in 2024. (Rogers Decl. ¶ 17; Rogers Decl. Ex. 2.) Specifically, principal reductions were made in January and March 2024 and began to semi-regularly occur starting in November 2024, as follows:

a. $5,000 reduction in November 2024;
b. $15,000 reduction in December 2024;
c. $40,000 reduction in February 2025;
d. $25,000 reduction in March 2025;
e. $43,000 reduction in April 2025;
f. $25,000 reduction in May 2025;
g. $25,000 reduction in June 2025;
h. $25,000 reductions in September and December 2025, reflecting payments made to Defendant's mother, Margarita Whalen.

(*See* Rogers Decl. Ex. 2.) The principal on the Whalen Family Loan was reduced by $22,500 in 2017; $30,000 in 2018; $35,000 in 2019; $2,500 in 2020, $40,000 in 2024, and $208,000 in 2025. (Rogers Decl. ¶ 17; Rogers Decl. Ex. 2.)

18. The parties dispute whether the transfers to Defendant's family and the accelerated repayment schedule in 2025 were outside the ordinary course of business. (Br. Supp. 6; Br. Opp'n 16–18.)

C. Luxury Vehicle Payments

19. 5Church leased a 2017 BMW from 2017 to 2020. (*See* Br. Opp'n Ex. 11,

at 1, ECF No. 100.11.) 5Church began leasing a 2023 Audi in August 2023, (Br. Opp'n Ex. 11, at 2), and leased a 2023 BMW from at least July 2025 until February 2026. (Whalen Decl. ¶¶ 71–72; CU Charleston Gen. Ledger July – Sep. 2025, at line 117, ECF No. 94.2 [Gen. Ledger July – Sep. 2025].) The 2023 Audi has been leased for Jamie Lynch's use in representing 5Church while traveling the southeastern United States. (Whalen Decl. ¶¶ 71, 73–77.) The 2023 BMW was leased for Defendant's use. (Whalen Decl. ¶ 72.)

20. 5Church's relevant payments on the 2023 Audi were as follows:

a. $617.39 on 31 July 2025, (Gen. Ledger July – Sep. 2025, at line 1798);

b. $586.52 on 31 August 2025, (Gen. Ledger July – Sep. 2025, at line 1809);

c. $1,543.47 on 31 October 2025, (CU Charleston Gen. Ledger Oct. – Dec. 2025, at lines 422, 1770, 8768, ECF No. 94.1 [Gen. Ledger Oct. – Dec. 2025]);

d. $1,543.47 on 30 November 2025, (Gen. Ledger Oct. – Dec. 2025, at lines 819, 1797, 8770)[2]; and

e. $1,543.47 on 31 December 2025, (Gen. Ledger Oct. – Dec. 2025, at lines 1238, 1826, 8772).

21. The $1,543.47 amounts appear to represent the entire monthly payment for the Audi. (*See* Br. Opp'n Ex. 11, at 2.)

[2] The payments on the Audi lease were transferred to CU Charlotte as part of a larger transfer from 5Church to CU Charlotte. (Gen. Ledger Oct. – Dec. 2025, at lines 422, 1770, 8768.)

22. 5Church's relevant payments on the 2023 BMW were as follows:

a. $1,917.56 on 10 October 2025, (Gen. Ledger Oct. – Dec. 2025, at line 150);

b. $1,917.56 on 10 November 2025, (Gen. Ledger Oct. – Dec. 2025, at line 571); and

c. $1,917.56 on 10 December 2025, (Gen. Ledger Oct. – Dec. 2025, at line 937).

23. Plaintiff argues that it is improper for 5Church to be solely responsible for the vehicle leases because the vehicles also benefit the other Affiliate Restaurants. (*See* Br. Supp. 6–7 n.3; WP Church's Reply Br. Supp. Mot. 8, ECF No. 101 [Reply].)

D. <u>Water Bill Payments</u>

24. From October to December 2025, 5Church paid water bills to the Charleston Water System. (*See, e.g.*, Gen. Ledger Oct. – Dec. 2025, at lines 203, 621, 1024; Rogers Decl. Ex. 3.) The general ledger entries for these payments contain the name Kristin Whalen's, who is Defendant's wife. (*See, e.g.*, Gen. Ledger Oct. – Dec. 2025, at line 1024.) The service address on the water bills is CU Charleston's address. (*See* Compl. ¶ 3; Rogers Decl. Ex. 3.)

25. Plaintiff asserts that the water bill payments were partially made on behalf of Kristin Whalen because her name appears in the general ledger entries for those payments. (Br. Supp. 7.) Defendant, in response, contends the payments were made solely on 5Church's behalf as provided by the service address on the water bills. (Br. Opp'n 20–21.) He further contends that Kristin Whalen's name appears because

she is general counsel for the Affiliate Restaurants.

E. <u>Affiliate Restaurants' Use of 5Church's Credit Card</u>

26. From October to December 2025, a series of expenses associated with the Affiliate Restaurants were charged to 5Church's credit card. (*See* Gen. Ledger Oct. – Dec. 2025, at lines 3657–3859.) These charges were primarily incurred by CU Charlotte and include:

a. Purchases by CU Charlotte for gas, two meals, and items from a smoke and vape shop, (Gen. Ledger Oct. – Dec. 2025, at lines 3669, 3672, 3680, 3777);

b. Purchases by CU Denver for the Denver Post and MSI Insurance, (Gen. Ledger Oct. – Dec. 2025, at lines 3674, 3692, 3792, 3849); and

c. Purchases by LBH for the CLT Ledger Newsletter, (Gen. Ledger Oct. – Dec. 2025, at lines 3793, 3852).

27. CU Denver, CU Charlotte, and LBH ultimately reimbursed 5Church for the expenses they incurred. (Rogers Decl. ¶¶ 10, 25–29; Gen. Ledger Oct. – Dec. 2025, at lines 1751–1852, 1872–86.)

F. <u>Salary and Management Fee Increases</u>

28. The collective weekly salary of 5SG's owners increased from $6,909.61 on 1 August 2025 to $12,075.80 on 8 August 2025, and then to $13,367.30 on 15 August 2025. (*See* Gen. Ledger July – Sep. 2025, at lines 8287–305; Gen. Ledger Oct. – Dec. 2025, at lines 7162–80; Rogers Decl. ¶¶ 30–32.)

29. Including the increase in the collective salary of 5SG's owners, the fees

5Church paid to 5SG increased by over 60% in 2025. (*See* Rogers Decl. ¶¶ 33–35.)[3] This increase is primarily attributable to the compensation paid to 5Church's employees, as well as 5SG's owners and "operations executives." (Rogers Decl. ¶¶ 34, 36–37.)

30. The parties dispute whether the salary and fee increases reflect an attempt by Defendant to siphon money out of 5Church for his own benefit after he became aware of the lawsuit. (Br. Supp. 8–9; Br. Opp'n 22–23.)

G. Use of 5Church's Credit Card for Defendant's Personal Expenses

31. Defendant has used 5Church's credit card to pay for his personal expenses and deducted those amounts from the balance 5Church owes on the Whalen Family Loan. (*See, e.g.*, Gen. Ledger Oct. – Dec. 2025, at lines 3663–64, 4695–96.) These expenses include purchases from Amazon and Uber Eats, as well as a purchase for a hotel stay related to a 5Church event. (Whalen Decl. ¶¶ 104–05; Gen. Ledger Oct. – Dec. 2025, at lines 3663, 3694, 3778.) The parties dispute whether these transactions were appropriate or in the ordinary course of business. (Br. Supp. 9; Br. Opp'n 24.)

H. Financial Condition of 5Church and the Affiliate Restaurants.

32. 5Church operated at a net loss of $6,169 in 2025, but has netted a profit thus far in 2026. (Rogers Decl. ¶¶ 45–47.) 5Church has also paid out a total of $383,000 in distributions to its members this year. (Rogers Decl. ¶ 48.)

33. In 2025, the balances on the loans the Affiliate Restaurants owed to

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[3] Excluding the increase in the collective salary of 5SG's owners, the fees 5Church paid to 5SG purportedly increased by 28% in 2025. (Rogers Decl. ¶ 37.)

5Church either decreased or remained the same. As of December 2025, the loan balances were as follows:

a. Pink Moon: $224,432

b. CU Charlotte: $1,129,136

c. Ophelia's: $306,858

d. CU Nashville: $594,662

e. CU Denver: $1,371,862

f. CU Miami: $494,180

g. LBH: $0[4]

(Rogers Decl. ¶ 10.)

34. All but two of the Affiliate Restaurants continue to operate as restaurants. CU Miami remains merely a restaurant concept as that restaurant never opened. (*See* Johnson Decl. ¶ 13.) CU Denver was recently placed into a receivership and ceased restaurant operations. (*See* Order Appointing Receiver, *Whalen v. Tuttle*, No. 24CV029650-590 (June 18, 2026), ECF No. 252; Order Regarding Judicial Dissolution & Receiver's Duties, *Whalen*, No. 24CV029650-590 (July 29, 2026), ECF No. 269.)[5]

CONCLUSIONS OF LAW

35. Any Finding of Fact that is more appropriately deemed a Conclusion of

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[4] As of December 2025, 5Church owed LBH $5,029. (Rogers Decl. ¶ 10.)

[5] The Court is permitted to take judicial notice of these filings and the undisputed facts therein. *See Gray Constr., Inc. v. Future Meat Techs., Inc.*, 2026 NCBC LEXIS 150, at *2 n.1 (N.C. Super. Ct. July 27, 2026); *Southland Nat'l Ins. Corp. in Liquidation v. Lindberg*, 302 N.C. App. 53, 63 (2025).

Law, and any Conclusion of Law that is more appropriately deemed a Finding of Fact, shall be so deemed and incorporated by reference as a Finding of Fact or Conclusion of Law, as appropriate.

36. Through the present Motion, Plaintiff requests that the Court appoint a receiver for 5Church pursuant to N.C.G.S. § 1-502(1) as well as based on its inherent authority.

37. Under Article 38 of the North Carolina General Statutes, a court may appoint a receiver

> [b]efore judgment, on the application of either party, when [(1)] the party establishes an apparent right to property that is the subject of the action and [(2)] in the possession of an adverse party, and [(3)] the property or its rents and profits are in danger of being lost or materially injured or impaired[.]

N.C.G.S. § 1-502(1). A court may also appoint a receiver pursuant to its inherent authority. *Lambeth v. Lambeth*, 249 N.C. 315, 321 (1959); *Bandy v. Gibson*, 2017 NCBC LEXIS 57, at *8 (N.C. Super. Ct. June 29, 2017).

38. Because "[t]he appointment of a receiver is an extraordinary remedy[,]" the movant must show "a likelihood of success on the merits of one or more of its claims." *Howard v. IOMAXIS, LLC*, 2024 NCBC LEXIS 15, at *24 (N.C. Super. Ct. Jan. 25, 2024) (citations omitted). In addition, a court will only appoint a receiver where there is no other "safe or expedient remedy." *Mooring Cap. Fund, LLC v. Comstock N.C., LLC*, 2009 NCBC LEXIS 32, at *31–32 (N.C. Super. Ct. Nov. 13, 2009) (citing *Murphy v. Murphy*, 261 N.C. 95, 101 (1964)); *Norment v. Rabon*, 2022 NCBC LEXIS 86, at *27 (N.C. Super. Ct. July 7, 2022) (denying request for receiver where

preliminary injunction sufficed to protect plaintiff's interests).

39. The burden of establishing the need for a receivership is higher when an LLC is active and solvent. *See Blueprint 2020 Opp. Zone Fund, LLLP v. 10 Academy St. QOZB I, LLC*, 2023 NCBC LEXIS 49, at *10 (N.C. Super. Ct. Mar. 9, 2023) ("[A]ppointment of a receiver for a going, solvent corporation is an especially rare and drastic remedy[.]" (quoting *Lowder v. All Star Mills, Inc.*, 301 N.C. 561, 577 (1981))). However, appointment of a receiver over a solvent LLC is appropriate "where there is fraud or gross misconduct in the management of the [LLC], where there is incapacity or neglect on the part of the [sic] those operating it, where there is evidence of diversion of [LLC] funds, and even where there is a refusal to permit inspection of [LLC] books, at least when such a refusal occurs in combination with the existence of other grounds." *Id.* at *10–13 (quoting *Lowder*, 301 N.C. at 577). Appointment of a receiver under the Court's inherent authority is also appropriate in such circumstances. *See id.*; *Worley v. Ormond*, 2024 NCBC LEXIS 93, at *19–20 (N.C. Super. Ct. July 11, 2024).

40. Ultimately, the decision to appoint a receiver is within the trial court's discretion. *Barnes v. Kochhar*, 178 N.C. App. 489, 500 (2006).

A. <u>Whether WP Church has an apparent right to 5Church's assets</u>

41. Plaintiff argues that it has an apparent right to 5Church's assets because it is a member of 5Church. (Br. Supp. 12; Compl. ¶ 117.) While Defendant points out that Plaintiff only holds a minority interest in 5Church, he nevertheless concedes that Plaintiff has an apparent right to 5Church's assets as a member of the

LLC. (*See* Br. Opp'n 9.) As such, the Court finds that Plaintiff has satisfied this element. *See Howard v. IOMAXIS, LLC*, 2024 NCBC LEXIS 159, at *18 (N.C. Super. Ct. Dec. 17, 2024) (holder of interest in LLC had apparent right to property controlled by LLC).

B. Whether 5Church's assets are in the possession of an adverse party

42. Plaintiff argues that 5Church's assets are in the possession of an adverse party—namely, Defendant (as 5Church's manager). (Br. Supp. 12.) Plaintiff contends that Defendant has used his "exclusive control over and access to" 5Church's assets "to transfer and disburse [these] assets in violation of this Court's PI Order and to the detriment of the [LLC's] members." (Br. Supp. 12–13.)

43. Defendant contends that it is unclear whether 5Church's assets are in the possession of an adverse party. (Br. Opp'n 10–11.) He asserts that Plaintiff never identified in the caption of its pleadings whether he is being sued in his personal capacity (in which he has no power over 5Church's assets) or in his capacity as 5Church's manager. (Br. Opp'n 11.) Defendant argues that if he is being sued in his personal capacity, the Motion fails, but, if he is being sued as 5Church's manager, "then an adverse party would arguably have control over" 5Church's assets. (Br. Opp'n 11.)

44. Defendant has not pointed to any North Carolina case law requiring that the caption of a lawsuit must state the capacity in which the manager of a limited liability company is being sued. Claims against managers or corporate officers have routinely proceeded in this Court absent a specification of the defendant's capacity in

the complaint's caption. Further, the Complaint makes it clear that the claims asserted against Defendant in this case are based on his actions as 5Church's manager. (*See, e.g.*, Compl. ¶ 24 ("Acting in his capacity as Manager of 5Church CHS, [Defendant] stole over $4.2 million from 5Church CHS and gave it to the [Affiliate Restaurants]."). Thus, the Court finds that Defendant has been sued in his capacity as 5Church's manager and that 5Church's funds are in the possession of an adverse party.

45. Moreover, given 5Church's operating agreement's conferral of significant authority to Defendant—in his role as manager—over 5Church's assets, (*see* Op. Agmt. §§ 4.1–.3), the Court finds that 5Church's assets are in the possession of an adverse party for purposes of N.C.G.S. § 1-502(1).

C. <u>Whether 5Church's assets are in danger of being lost or materially injured or impaired</u>

46. Plaintiff argues that 5Church's assets are in danger of being lost or materially injured or impaired due to Defendant's conduct. Plaintiff points out that the Affiliate Restaurants still owe 5Church millions of dollars due to the inter-company loans. (Br. Supp. 13; Compl. ¶¶ 3, 67, 76.) Plaintiff also argues that the transactions 5Church undertook after entry of the PI Order (in violation of that Order) show that injunctive relief has not sufficed to protect the company's assets. (Br. Supp. 13; *see supra* ¶¶ 15–31.) In addition, Plaintiff points to the status of CU Miami and CU Denver as evidence that 5Church may never be repaid the funds owed to it by those entities. (Reply 5, 7.)

47. Defendant responds that a receivership is unnecessary because he has

made efforts to comply with the PI Order. (Br. Opp'n 11–16.) He points to the email he sent to his staff directing them to comply with the PI Order after it was issued. (*See supra* ¶ 15.) He also asserts that at the end of 2025 the amounts the Affiliate Restaurants owed to 5Church had either decreased or remained the same. (Br. Opp'n 12–13; Whalen Decl. ¶ 60.)

48. The Court concludes that 5Church's assets are in danger of being lost or materially impaired. 5Church's above-described transfers to the Affiliate Restaurants violate the PI Order and have convinced the Court that the PI Order alone is insufficient to preserve 5Church's assets. In addition, Defendant's repeated use of 5Church's credit card to benefit the Affiliate Restaurants also constitutes a risk of harm to 5Church's assets. Moreover, the funds 5Church transferred to CU Denver may be unrecoverable given that restaurant's recent closure.

49. The Court further concludes that Plaintiff has shown a likelihood of success on the merits of at least one claim[6]; that a receivership is appropriate despite 5Church's solvency due to the diversion of its funds to Defendant and the Affiliate Restaurants; and that there is no other safe or expedient remedy given the repeated violations of the PI Order. As such, a receivership is appropriate under both N.C.G.S. § 1-502(1) and the Court's inherent authority. *See Howard*, 2024 NCBC LEXIS 15, at *24–29.

50. Accordingly, the Court, in the exercise of its discretion, **GRANTS** the Motion to the extent forth below, which is intended to be limited to financial oversight

[6] (*See* PI Order ¶¶ 49–85 (concluding Plaintiff is likely to succeed on its derivative claim on behalf of 5Church for breach of fiduciary duty).)

and regulation. This Order is not intended to remove Defendant as 5Church's manager or to limit his authority under the 5Church Operating Agreement except as expressly set forth herein. The Court **ORDERS** as follows:

i. Whalen shall be suspended from any management, officer, director, signatory, or decision-making role with respect to 5Church Finances as defined herein, whether formal or informal, including but not limited to any authority over 5Church's bank accounts or expenditures. "Finances" means all matters relating to 5Church's cash, accounts, receipts, disbursements, expenditures, transfers, debt, distributions, compensation, intercompany and affiliate transactions, and any contract, amendment, or settlement that would affect 5Church's financial condition, including those matters enumerated in Paragraphs 50(i)–(iv), (xi).

ii. Whalen shall not have authority to make, review, supervise, modify, approve, or disapprove the following:

a. expenditures, transfers, or commitments of 5Church funds or assets;

b. payments made by 5Church to any professional, including but not limited to legal fees;

c. the repayment of debt or servicing of any loans by 5Church;

d. the compensation paid by 5Church to any individual, including but not limited to, Whalen or any employee, owner, member, or consultant;

e. any distributions of 5Church assets made to 5Church's members;

f. any new intercompany or affiliate transactions; and

g. any material contracts, amendments, or settlements that would impact 5Church's Finances.

iii. Whalen is enjoined from exercising influence over 5Church's Finances through intermediaries, including but not limited to communicating directives, recommendations, or guidance to 5Church officers, employees, vendors, the general manager, or agents; acting through affiliates or related entities; or using contractual, financial, or personal relationships to affect decisions regarding 5Church's Finances. Whalen shall not hold himself out as having any authority over 5Church's Finances and shall take no action intended to circumvent or undermine the Receiver's authority or the Court's orders.

iv. Whalen shall remain free to provide factual information, historical context, and responsive assistance to the Limited Receiver.

v. Pursuant to N.C. Gen. Stat. § 1-502(1) and the Court's inherent authority, the Court appoints BDO Consulting Group, LLC, and

Ed Sanz as BDO Consulting Group, LLC's agent, as a Limited Receiver over 5Church's Finances. The Receiver's powers shall be limited to the powers either expressly described in this Order or as necessary to the execution of the authority and responsibilities described herein.

vi. The Receiver shall have full and immediate access to all 5Church books, records, financial statements, bank accounts, accounting systems, contracts, and electronically stored information, and may require 5Church personnel and third-party service providers to provide such information as necessary to fulfill the Receiver's duties.

vii. Notwithstanding any provision to the contrary, the Receiver shall not be entitled to information that is protected by the attorney-client privilege, work product doctrine or any other legal privilege, including but not limited to privileged or work product information related to this litigation.

viii. The Receiver shall implement reasonable safeguards and internal controls relating to 5Church's Finances as he determines to be appropriate, while avoiding unnecessary interference with routine operations.

ix. The Receiver shall provide monthly written reports to the Court and the parties summarizing 5Church's financial condition, material activities during the time period, cooperation, and any concerns regarding compliance with Court orders, risk to 5Church assets, or any other matter it deems necessary or significant to communicate.

x. The Receiver shall have the authority to use 5Church's proceeds, income, and other assets to make such payments, in the ordinary course of business, as may be needed and proper for the management, operation, protection, maintenance, and/or preservation of 5Church, or may allow a Controller to do so based upon defined criteria or subject to safeguards as may be established, with the expectation of minimizing costs and expenses to the extent possible.

xi. The Receiver shall, have the authority to review, supervise, modify, approve, or disapprove:

a. expenditures, transfers, or commitments of 5Church's funds or assets;

b. the repayment of debt or servicing of any loans by 5Church;

c. any distributions of 5Church assets made to 5Church's members;

d. any new intercompany or affiliate transactions;

e. any material contracts, amendments, or settlements that would impact 5Church Finances;

f. payments made by 5Church to any professional, including but not limited to legal fees; and

g. the compensation paid by 5Church to any individual, including but not limited to, Whalen or any employee, owner, member, or consultant.

xii. The Receiver shall have the authority to use 5Church's proceeds and income to make pro rata distributions to 5Church Members as provided by the 5Church Operating Agreement and any amendments thereto.

xiii. All officers, managers, employees, members, and agents of 5Church—including the Parties—shall cooperate fully with the Receiver and shall take no action to interfere with or circumvent the Receiver's authority.

xiv. Absent further order of the Court or except as provided herein, the Receiver shall not liquidate 5Church, sell substantially all of the Company's assets, terminate key personnel, or materially alter 5Church's business model.

xv. 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.

xvi. 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.

xvii. Receiver is authorized to obtain the industry standard insurance protections afforded receivers, including but not limited to: (1) being named as an insured or additional insured on 5Church's liability policies and/or insurance policies; and (2) appropriate waiver of subrogation clauses pursuant to which 5Church's insurance carriers would waive all rights of subrogation against Receiver with respect to losses payable under such policies. Receiver is authorized to procure additional insurance policies as it deems necessary.

xviii. 5Church shall indemnify and hold harmless the Receiver from and against all claims, liabilities, damages or expenses (including attorneys' fees) of any kind relating to the Receivership, whether arising in contract, statute, tort or otherwise (collectively, the "Claims") that are brought by a third party, except to the extent arising due to Receiver's own gross negligence, fraud, illegal acts, or willful misconduct.

xix. It is the expectation that Receiver and Receiver's staff shall directly carry out the duties contained in this Order. The Receiver is not authorized to employ attorneys, accountants, other professionals, contractors, managing agents, or any other person, firm or corporation absent additional Order from this Court, which may be requested by the Receiver in writing, with the Parties and members being given ten (10) business days to note an objection.

xx. The Receiver shall be entitled to compensation from 5Church for his services at the rates set out in the Declaration of Ed Sanz. Before receiving such compensation, the Receiver shall file an application with the Court and serve a copy upon all Parties and 5Church. The application may be made on an interim or final basis and must advise that any objection to the application must be filed within ten days of service of the notice.

xxi. Pursuant to N.C.G.S. § 1.502.1, this Order is conditioned on and shall take effect after the posting of a bond by WP Church in the amount of $100,000.00 and payable to Defendant. Immediately following the posting of the bond, WP Church is **DIRECTED** to file a certification of having done so on the Court's electronic docket.

S**O ORDERED**, this the 14th day of September 2026.

/s/ Mark A. Davis
Mark A. Davis
Special Superior Court Judge
for Complex Business Cases