

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ALEX FERRARI,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 2:23-cv-01541-CBB
)	
MATTHEW FERRARI,)	
)	
Defendant.)	JURY TRIAL DEMANDED

PLAINTIFF’S EMERGENCY MOTION TO APPOINT A RECEIVER

INTRODUCTION

What began as a lawsuit based on certain obvious and oppressive actions by a majority shareholder has now revealed an emergency threatening the Company’s survival and requiring the Court’s immediate intervention. Plaintiff Alex Ferrari (“Plaintiff” or “Alex”) moves the Court pursuant to Federal Rule of Civil Procedure 66 and Michigan’s minority shareholder oppression statute, Mich. Comp. Laws 450.1489 (the “Oppression Statute”) to appoint a receiver for Ferrari Importing Company, Inc., d/b/a GAMMA Sports (the “Company”). Defendant Matthew Ferrari (“Defendant”) is the majority shareholder of the Company (with 50.47%) and current CEO. He is also Alex’s brother. Alex is a minority shareholder with ownership of the remaining 49.53% of the Company. Even more urgent than addressing Defendant’s oppressive acts identified in the Complaint, discovery has unearthed disturbing revelations that have prompted this Emergency Motion to Appoint a Receiver.¹

The newly discovered wrongful acts by Defendant include theft in the form of over a million dollars in personal expenses charged to the Company, unauthorized and excessive

¹ Louis B. Plung, a CPA and partner with Louis Plung & Company, a regional accounting firm based in Pittsburgh, has agreed to serve as Receiver for the Company. Mr. Plung has substantial accounting, auditing, tax, bankruptcy, and related experience. *See* Exhibit 1 attached (CV of Mr. Plung).

compensation, failure to make loan and rent payments, and massive losses that have wiped out the Company's retained earnings and left the Company in a negative equity position. If these actions were not bad enough, Alex has also learned why Defendant may no longer care about the destruction of the Company he leads. In recent months, Defendant has used the Company's personnel, hours, and resources to divert a *Company* business opportunity into a new competing entity wholly owned by Defendant.

The breadth of this wrongdoing—and the depth of the potential damage to the Company—compels the appointment of a receiver in order to prevent continued losses and irreparable harm.

FACTUAL BACKGROUND

I. Defendant's Misconduct Set Forth in the Complaint

Alex's Complaint, filed August 25, 2023, asserted claims for Minority Shareholder Oppression Under the Oppression Statute (Count 1); Breach of Fiduciary Duties (Count 2); and Unjust Enrichment (Count 3). As it explains, following the death of their father and Company founder Harry Ferrari in 2016, Defendant began taking actions to both squeeze his brother out of the Company and enrich himself. Among other things, Defendant terminated Alex's compensation and benefits, Compl. ¶¶ 32-34; increased his own pay to excessive levels, *id.* ¶¶ 29-31, 34; caused the Company to stop holding shareholder and director meetings, *id.* ¶¶ 35-37; excluded Alex from participating in corporate governance, *id.* ¶¶ 38-43, 52-56; and caused the Company to take out massive multi-million-dollar loans, including from a family trust, without Board approval and despite Alex's objections, *id.* ¶¶ 44-51.

II. Recent discovery alerted Plaintiff to an emergency requiring Court intervention.

Alex has only recently discovered the stunning magnitude of Defendant's misconduct and how it has placed the Company in jeopardy. In recent years, Defendant has continued to increase his already excessive compensation while the Company was suffering large losses—without

disclosure to and/or approval by the Board of Directors (as required by the Bylaws)²—while failing to repay loans improperly taken from related entities, including family trusts and estates.³ He has also continued to block Alex from participating in corporate governance and decision making regarding material transactions involving the Company by failing to hold shareholders and directors meetings.

Without oversight, Defendant has used the Company as his personal piggy bank, charging approximately \$968,000 in personal expenses to the Company from 2015 to 2024 using three different Company credit cards and directing the use of Company funds to pay for an exotic car purchase, totaling approximately \$1,034,549 in personal expenses run through the Company. Defendant *admits* he ran at least \$179,000 in personal expenses through the Company by misusing one Company credit card (Citizens Bank) from 2021 through 2023 and directing the payment of other personal expenses by the Company.⁴ Following an accounting “reconstruction,” arranged by Defendant after Alex’s accounting experts began raising questions about his personal expenses being run through the Company, the Defendant provided Alex with a report (the “Accounting Report”), in which Defendant *admits* that these charges were improperly paid and claimed as a business expense by the Company.⁵ *See* Ex. 7. Further discovery has revealed Defendant’s

² *See, e.g.*, the Company’s 2022, 2023, and 2024 federal income tax returns attached as Exhibits 2, 3, and 4, and the Company’s Bylaws attached as Exhibit 5 (MB-5) (“Article 5.12 Salaries: The salaries of the officers shall be fixed from time to time by the Board of Directors....”).

³ In a similar manner, he has caused the Company to stop paying rent under its Lease with a related company, Sports Technology Group, LLC (“STG”). At the end of 2024, the Company had an unpaid rent balance of \$588,567—approximately *three years* of unpaid rent. *See* Exhibit 6 (MT-14) (STG 2024 tax return, Statement 2).

⁴ These fraudulent “business expenses” caused the Company’s tax returns to be fraudulently misstated by overstating business expenses.

⁵ Defendant limited the Accounting Report (Exhibit 7) (MB-9) to 2021-2023 and only provided disclosures about one Company credit card (Citizens Bank), even though documents obtained in discovery show that Defendant has also improperly charged hundreds of thousands of dollars of personal expenses to the Company’s American Express and PNC Bank credit cards since at least 2015. *See infra*. In addition, even the admitted \$179,000 in personal expenses for 2021-2023, which was artificially limited by Defendant to only the Citizens Bank credit card, is understated by almost \$200,000 (which doesn’t even include the American Express and PNC Bank charges). *See* Exhibits 8 and 16.

Accounting Report to be severely deficient and merely a litigation tactic designed to keep Plaintiff from fully discovering the extent of his fraud.

Unfortunately, the offenses admitted by Defendant in the Accounting Report were just the tip of the iceberg. Additional discovery—including subpoenas to American Express and PNC Bank to obtain Company credit card statements that the Defendant reported as missing—show further rampant use of Company funds to pay for Defendant’s personal expenses totaling approximately \$1,034,549.⁶ These additional improper expenses include:

- The purchase of an Acura NSX for \$66,500 in July 2020, shortly after the Company received \$480,000 in federal Covid-related Payroll Protection Plan (“PPP”) funds in late April/early May of 2020. *See* Exhibits 11, 12, and 13;
- The service costs for the Acura NSX. *See* Exhibit 14 (invoice with Company expense spreadsheet);
- The purchase of a \$35,123 Rolex watch in August 2020. *See* Exhibit 15 (invoice with Company expense spreadsheet);
- A \$9,195 Silversea Cruise in and around Barbados for Defendant and his family. *See* Ex. 9 (September 2016);
- A \$12,519 INPAX Academy & Range Lifetime Membership at a personal shooting range. *See* Ex. 9 (November 2017);
- An \$11,545.56 Silversea Cruise to Rome and Greece for Defendant and his family. *See* Ex. 9 (January 2018);
- A \$13,000 family vacation to London. *See* Ex. 9 (June and July 2015);
- An \$11,755 family trip to Florida and Amelia Island where he purchased a Mercedes car at auction. *See* Ex. 9 (March 2018);
- The costs related to his purchase of a Mercedes classic car on Amelia Island. *See* Ex. 9 (March 2018);

⁶ Defendant’s personal expenses improperly charged to the Company via the Company’s American Express card—which Alex only discovered through a third -party subpoenas to AmEx—total over \$209,000 for the period of 2015 to 2024. *See* Exhibit 9. In addition, Plaintiff just discovered an additional \$254,141.30 in personal expenses charged to the Company’s PNC credit card from 2016-2021. *See* Exhibit 10.

- Tens of thousands of dollars in other personal charges, including lavish meals while in Pittsburgh and hotel, car rental, and airfare expenses for Defendant and his family. *See* Ex. 9;
- \$286,267 in Country Club dues and expenses paid by the Company for Defendant, his wife, and son at three Country Clubs: The Pittsburgh Golf Club, Rolling Rock County Club, and the Duquesne Club. *See* Exhibit 16; and
- In summary, Defendant wrongfully charged over a million dollars of his personal expenses to the Company via the following methods:
 - American Express credit card: \$209,194;
 - PNC Bank credit card: \$254,141.30;
 - Citizens Bank credit card: \$219,070;
 - Three Country Clubs: \$286,267; and
 - Car purchase using Company funds: \$66,500;
 - Total: \$1,034,549.⁷

If these monetary diversions were not enough, Defendant has also diverted a business opportunity and used Company resources to turn it into a separate competing business for himself. From approximately 2022-2025, Defendant used Company personnel and time to create and launch a new pickleball company called “GAMMA Pickleball Club LLC” (“GAMMA Pickleball”).⁸ Solely owned by Defendant, GAMMA Pickleball opened a pickleball and padel facility in March of 2025 called “Matt’s Pickle & Padel.”⁹ Defendant oversaw this effort: (1) without disclosing to Alex or the Board of Directors the nature and terms of the new business venture; (2) without repaying the Company for lost employees’ time diverted to the new venture;

⁷ Defendant’s theft of over a million dollars from the Company in the form for personal expenses run through the Company, on top of his exorbitant compensation and benefits, partially explains Defendant’s \$5 million borrowing spree including his own claimed “loans” to the Company for which he arranged for himself higher interest rates and earlier repayments while the loans from the family trust and estate went unpaid. *See* Compl. at ¶¶ 44-51.

⁸ *See* Exhibit 17 (GAMMA Pickleball Club LLC Operating Agreement and Certificate of Organization).

⁹ *See* Joanne Klimovich Harrop, *Region’s 1st padel courts headed to Aleppo*, Pittsburgh Trib.-Rev., Feb. 10, 2025 (available at <https://community.triblive.com/news/3730345>); *see also* Exhibit 18 (photo) and Exhibit 19 (2/22/25 Notice of First Day of Business); Exhibit 20 (2/6/25 article) (JM-43); Exhibit 21 (social media announcements) (JM-44 and JM-45); Exhibit 22 (advertisement) (JM-51).

and (3) without repaying the Company for the use of the Company's name and intellectual property.¹⁰

Finally, upon information and belief, the Company has defaulted on its loan with Citizens Bank, causing the Bank to assign the loan to its workout group and exposing the Company to potential bankruptcy.

Taken together, these actions have caused tremendous—and potentially irreparable—damage. In 2024, the Company incurred a loss of \$3,263,245, which wiped out all retained earnings and left the Company with *negative* equity of over \$700,000. *See* Ex. 4 (2024 Return). Current estimates show the Company planning for a loss of \$1,369,665 in 2025. *See* Exhibit 24. These losses have wiped out Alex's 49.53% shareholder interest, which was valued at approximately \$2.79 million just three years ago. *See* Exhibit 25. The Court should exercise its discretion to appoint a receiver and stop the bleeding caused by Defendant's fraudulent acts.

LEGAL STANDARD

Federal courts sitting in diversity apply “federal law when determining whether to appoint a receiver.” *Citizens Bank, N.A. v. Nostrum Labs, Inc.*, 2024 U.S. Dist. LEXIS 113327, at *12-13 (D.N.J. June 27, 2024); *see also, e.g., Midwest Bank v. Goldsmith*, 467 F. Supp. 3d 242, 248 (M.D. Pa. 2020) (“[A] federal court sitting in diversity must apply federal law when determining whether to appoint a receiver.”). Opinions clearly hold that courts have a discretionary right to “appoint a receiver in a proper case,” including “to avert... loss of assets through waste and mismanagement,” *Citizens Bank, N.A.*, 2024 U.S. Dist. LEXIS 113327, at *13 (quoting *Tanzer v. Huffines*, 408 F.2d 42, 43 (3d Cir. 1969)). However, the court must “articulate the legal principles and factual bases

¹⁰ *See, e.g.*, 6/20/25 Deposition Transcript of J. Taylor-Martin, attached as Exhibit 23 (*see* Tr. 62, Mr. Taylor-Martin was being solely paid by the Company while working on the new venture and did not keep track of his time spent on the new project; Tr. 129, 161-163, new venture using the Company's intellectual property with no license agreement).

that justify imposing a receivership.” *Id.* (quoting *KeyBank Nat’l Ass’n v. Fleetway Leasing Co.*, 781 F. App’x 119, 122 (3d Cir. 2019)) (cleaned up).

While there “is no precise formula for determining when a receiver should be appointed,” Receivers are generally appointed when, like in this case, “the party seeking receivership has an equitable interest in the property to be seized or... judgments that cannot otherwise be satisfied.” *Citizens Bank, N.A.*, 2024 U.S. Dist. LEXIS 113327, at *14 (quoting *Leone Indus. v. Associated Packaging, Inc.*, 795 F. Supp. 117, 120 (D.N.J. 1992)) (cleaned up). This usually requires “a showing of fraud or the imminent danger of property being lost, injured, diminished in value or squandered,” in a situation “where legal remedies are inadequate.” *Id.*

District Courts in the Third Circuit consider nine factors when making this determination:

(1) the probability of the plaintiff’s success in the action; (2) the possibility of irreparable injury to the plaintiff’s interests in property; (3) the inadequacy of the security to satisfy the debt; (4) the probability that fraudulent conduct has occurred or will occur to frustrate the plaintiff’s claim; (5) the financial position of the debtor; (6) the imminent danger of the property being lost, concealed, injured, diminished in value, or squandered; (7) the inadequacy of the available legal remedies; (8) the lack of a less drastic equitable remedy; and (9) the likelihood that appointing a receiver will do more harm than good.

Citizens Bank, N.A., 2024 U.S. Dist. LEXIS 113327, at *14-15 (quoting *Value Drug Co. v. Only One Hub, Inc.*, Civ. No. 23-00263, 2023 U.S. Dist. LEXIS 220316, 2023 WL 8540912, at *5 (W.D. Pa. Dec. 11, 2023)). Important here, the case law also shows that judicial discretion plays a large role in this assessment, and courts are free to consider evidence that might be otherwise inadmissible at trial or in summary judgment proceedings. *KeyBank Nat’l Ass’n v. Fleetway Leasing Co.*, Civ. No. 18-667, 2019 U.S. Dist. LEXIS 177015, at *15-17 (E.D. Pa. Oct. 11, 2019); *see also* 12 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure Civil* § 2983 (3d ed. 2019) (noting that the “form and quantum of evidence required on a motion requesting the appointment of a receiver is a matter of judicial discretion”); *Fimbel v. Fimbel Door Corp.*, 2016

U.S. Dist. LEXIS 46917, at *7 (D.N.J. Apr. 7, 2016) (“[T]he Court is not bound by the strict rules governing evidence at trial or summary judgement, and therefore, may consider the evidence presented by Plaintiffs.”); *Miller v. Fisco, Inc.*, 376 F. Supp. 468, 470 (E.D. Pa. 1974) (“[T]he instant motion is more akin to a motion for injunctive relief than to a motion to dismiss for failure to state a claim.”); *PNC Bank, N.A. v. Goyette Mech. Co.*, 15 F.Supp.3d 754, 758-61 (E.D. Mich. 2014) (appointing receiver due to plaintiff’s likelihood of success on the merits, defendant’s questionable financial position, a lack of less intrusive remedies, acrimony presenting an imminent threat to the business, and the fact that plaintiff’s interests would be served by a receiver).¹¹

ANALYSIS

I. The Court should appoint a receiver for the Company.

The facts in this case, when applied to the factors set forth above, more than meet the standard for the appointment of a receiver to oversee the Company.

A. Plaintiff is likely to succeed on the merits for all three of his claims.

In his initial Complaint, Alex brought the following claims: Shareholder Oppression Under the Oppression Statute (Count 1); Breach of Fiduciary Duties (Count 2); and Unjust Enrichment (Count 3). He should prevail on all of them.

¹¹ Should the Court look to state law precedents, Michigan’s Oppression Statute (the basis for Count 1 of Plaintiff’s Complaint) provides extensive, and non-exhaustive, equitable, and legal remedies. *See* MCL § 1489(1) (“If the shareholder establishes grounds for relief, the circuit court may make an order or grant relief as it considers appropriate, *including, without limitation*, an order providing for any of the following...” (emphasis added); *Berger v. Katz*, 2011 Mich App Lexis 1408 (July 28, 2011) (court is not limited by language of MCL § 450.1489(1)). One of the available statutory remedies under the Oppression Statute is the dissolution and liquidation of the assets and business of the corporation. 450.1489(1)(a). If the Court can dissolve and liquidate the corporation, it also has the power to appoint a receiver. *See id.*; *Berger*, 2011 Mich. App. Lexis 1408, at *16-17 (court ordered the parties to either effectuate a buyout or a receiver would be appointed to liquidate the company).

1. *Defendant breached his fiduciary duties as a Controlling Shareholder, Director, and Officer.*

As the majority controlling shareholder and Director and Officer of the Company, Defendant owes important fiduciary duties to Alex, including the duty to not use his controlling power in such a way as to exclude Alex from his proper share of the benefits of the Company and to act in the best interests of all shareholders including Alex. *See, e.g., Murphy v. Inman*, 509 Mich. 132, 147-48, 983 N.W.2d 354 (2022); *Smith v. Smith*, 2020 U.S. Dist. Lexis 81240, at *16 (E.D. Mich. May 8, 2020) (directors and majority shareholders owe fiduciary duties to minority shareholder); *Emmet v. Franco*, 2017 U.S. Dist. Lexis 24226, at *22-23 (E.D. Mich. Feb. 22, 2017) (explaining that shareholders may bring direct action against “corporate directors, officers, or other persons”). Defendant’s fiduciary duties to Alex include due care, loyalty, good faith, candor, full disclosure regarding material transactions, and the fiduciary duty to provide each shareholder the best possible return on his investment. *See Murphy*, 509 Mich. 132 at 148. Defendant also has a fiduciary obligation to not divert the Company’s business opportunities.¹² *Prod. Finishing Corp. v. Shields*, 158 Mich. App. 479, 485, 405 N.W.2d 171 (1987). In this case, because “shareholders participate in the management of the corporation, the relationship among those in control... requires a higher standard of fiduciary responsibility, a standard more akin to partnership law.”

¹² Michigan Courts have explained that,

A corporate officer or director is under a fiduciary obligation not to divert a corporate business opportunity for his own personal gain. The rule is that if there is presented to a corporate officer or director a business opportunity, which the corporation is financially able to undertake, which is, from its nature, in the line of the corporation’s business and is of practical advantage to it, and which is one in which the corporation has an interest or a reasonable expectancy, and if, by embracing the opportunity, the self-interest of the officer or director will be brought into conflict with that of this corporation, the law will not permit him to seize the opportunity for himself. If he does, the corporation may claim the benefit of the transaction.

Prod. Finishing Corp., 158 Mich. App. 485-86 (quoting 18B Am Jur 2d, Corporations, § 1770, pp 623-624); *see also Angstrom Aluminum Castings, LLC v. Reed*, 2023 Mich. App. LEXIS 1171, at *6 (Ct. App. Feb 16, 2023) (“It is widely recognized that the appropriation of a corporate opportunity by an officer or director will constitute an actionable breach of fiduciary duties.”).

E.g., Estes v. Idea Engineering & Fabrications, Inc., 250 Mich. App. 270, 281, 649 N.W.2d 84 (2002). It is thus a breach of fiduciary duty for a majority shareholder to use his control to manipulate the corporation's financial condition and divert corporate profits to himself through a substantially increased salary and thereby minimize or foreclose the availability of distributions to the minority shareholder. *Berger v. Katz*, 2011 Mich. App. LEXIS 1408, at *5-6 (July 28, 2011) (“Where the evidence shows that majority shareholders improperly diverted corporate funds, a breach of fiduciary duty of the majority shareholders can be found.”).

Importantly, Defendant's intent is not an element of Alex's breach of fiduciary duties claim. *See, e.g., Highfield Beach v. Sanderson*, 331 Mich. App. 636, 666, 954 N.W.2d 231 (Mar. 24, 2020) (“To establish a claim for breach of fiduciary duty, a plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty, and (3) damages caused by the breach of duty.”). Damages may be obtained for a breach of fiduciary duty when a “position of influence has been acquired and abused, or when confidence has been reposed and betrayed.” *Prentis Family Found., Inc. v. Barbara Ann Karmanos Cancer Inst.*, 266 Mich. App. 39, 47 (Feb. 10, 2005). Defendant's multiple breaches of his fiduciary duties towards Alex entitles Alex to recover his resulting damages, regardless of Defendant's intent.

Defendant breached his fiduciary duties to Alex in all of the ways described above, and Alex is likely to succeed on his breach of fiduciary duties claims. Furthermore, a breach of fiduciary duties by a controlling shareholder entitles the oppressed shareholder to the remedies in Michigan's Oppression Statute. *E.g., Jelonek v. Emergency Medical Specialists*, 2001 Mich. App. Lexis 2653, at *24 (Aug. 28, 2001); *Thompson v Walker*, 253 Mich 126, 135, 234 N.W. 144 (1931) (breach of common law fiduciary duty to minority shareholders is likely to be oppressive).

2. *Defendant engaged in shareholder oppression, in violation of the Michigan Shareholder Oppression Statute.*

In addition to the relief available for breaches of fiduciary duty, Alex also has significant rights under Michigan's Oppression Statute, which provides broad relief when a shareholder shows that "those in control of the corporation are illegal, fraudulent, or willfully unfair and oppressive to the corporation or to the shareholder." *See* MCL § 450.1489. Such acts include the Wrongful Conduct described in the Complaint and the newly discovered conduct described above. Courts have further explained that the Oppression Statute is designed to provide "unique" statutory relief for shareholders of closely held companies who are owed the strictest of fiduciary duties by those in control of the corporation. *Estes*, 250 Mich. App. at 281-85. These rights are akin to those owed in a partnership, creating "a separate and independent statutory cause of action" for shareholders of closely-held corporations. *Id.* at 285-86. Notably, the Oppression Statute also permits recovery for harms to minority shareholders that are the result of controlling shareholders harms to the Company. *See, e.g., Lozowski v. Benedict*, 2006 Mich. App. Lexis 324, at *11-12 (Feb. 7, 2006).

To state a claim for shareholder oppression, a plaintiff must establish: "(i) that he is a shareholder of the corporation; (ii) that the defendants were 'directors' or 'in control of the corporation'; (iii) that the defendants engaged in acts; and (iv) that those acts were 'illegal, fraudulent, or willfully unfair and oppressive' to the corporation or to them as shareholders." *MJC Ventures LLC v. Detroit Trading Co.*, 2021 U.S. Dist. LEXIS 62099, at *18-19 (E.D. Mich. Mar. 30, 2021) (quoting *Smith*, 2020 U.S. Dist. LEXIS 81240, at 21-22 (E.D. Mich. May 8, 2020)). Here, the first three elements are undisputed: Alex is a shareholder, Defendant is an officer and director in control of the Company, and Defendant engaged in the acts at issue. The sole remaining issue is whether such acts are "willfully unfair and oppressive."

The Oppression Statute defines “willfully unfair and oppressive conduct” as “a continuing course of conduct or a significant action or series of actions that substantially interferes with the interests of the shareholder as a shareholder.” MCL § 450.1489(3). Various types of conduct by a controlling shareholder have been held to meet the definition of “willfully unfair and oppressive conduct” including:

- Termination of the minority shareholder’s employment or limitations on employment benefits that disproportionately interfere with the shareholder’s interests. MCL § 450.1489(3); *Berger*, 2011 Mich. App. Lexis 1408, at *14 (finding oppression where the controlling shareholders eliminated the plaintiff’s salary after he relocated to California and then substantially increased their own salaries); *see also Gerard v. Mantes, et al., Michigan Business Courts and Oppression*, Mich. Bar Journal, Jan 2017, at 19, available at https://manteselaw.com/wp-content/uploads/2025/03/GMDLTFM_Article_Jan_2017.pdf (explaining that, on remand from *Madugula v. Taub*, 496 Mich. 685, 718, 853 N.W.2d 75 (2014), the trial court found the controlling shareholder’s termination of plaintiff’s employment and associated compensation and benefits constituted illegal, fraudulent, or willfully unfair and oppressive conduct) (hereinafter “*Mantes, Michigan Business Courts*”);
- Preventing minority shareholders from exercising their rights, including voting, electing directors, examining books, and receiving dividends. *See Franchino v. Franchino*, 263 Mich. App. 172, 184, 687 N.W.2d 620 (2004); *Mantes, Michigan Business Courts*; MCL § 450.1487 (relating shareholder requests for records);
- Preventing minority shareholder from participating in corporate decisions. *E.g., Berger*, 2011 Mich. App. Lexis 1408, at *15; *Mantes, Michigan Business Courts*;
- Diverting corporate assets to the majority shareholder or other companies owned by the majority shareholder. *E.g., Lozowski*, 2006 Mich. App. Lexis 324, at *11-12;
- Misappropriating corporate opportunities and reducing value of the minority’s shareholder’s interest. *E.g., McDonnell v. Colburn*, 2010 Mich App Lexis 2029, at *2-5 (Oct 21, 2010);
- Self-dealing, including diverting funds to other entities and breaching fiduciary duties. *E.g., Weiner v. Weiner*, 2008 U.S. Dist. Lexis 21163, at *10-11 (W.D. Mich, Mar 18, 2008);
- Mismanagement of the corporation resulting in harm to either or both the corporation and to the interests of the shareholders. *E.g., Bromley v. Bromley*, 2006 U.S. Dist. Lexis 37022, at *13-14 (E.D. Mich. June 7, 2006);

- Depriving the minority shareholder of benefits of ownership, while those in control receive substantial benefits, including substantially increasing the salaries of the controlling shareholders. *E.g.*, *Berger*, 2011 Mich. App. Lexis 1408, at *13; and
- “Squeezing” or “freezing” the minority shareholder out of the corporation rather than giving him fair share of his investment. *E.g.*, *Berger*, 2011 Mich. App. Lexis 1408, at *12.

As set forth in the Complaint and above, *all* of the above types of wrongfully oppressive conduct occurred in this case. Thus, Defendant’s liability to Alex for Minority Shareholder Oppression Under the Oppression Statute (Count I) is clear, and Alex is very likely to succeed on the merits of such claim.

3. *Defendant’s actions constitute unjust enrichment.*

The oppressive conduct described above also constitutes unjust enrichment because Defendant wrongfully received and retained benefits at Alex’s expense without compensating Alex. *See Barber v. SMH (US), Inc.*, 202 Mich. App. 366, 375 (1993) (holding that to establish unjust enrichment, a plaintiff must establish: “(1) receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant”). Defendant’s receipt of substantial, excessive cash compensation and benefits—not to mention the payment of hundreds of thousands of dollars of his personal expenses by the Company—constitutes unjust enrichment. *See MJC Ventures LLC*, 2021 U.S. Dist. Lexis 62099, at *38 (receipt of cash is a tangible benefit). Alex is, therefore, also likely to succeed on the merits of this claim.

B. The appointment of a receiver is the only means of preventing further irreparable injury to Plaintiff.

To date, Defendant’s wrongful conduct has: (1) wiped out Alex’s \$2.79 million fair value of his shareholder interests (as of December 31, 2022); (2) caused significant harm to the Company and pushed it to the brink of bankruptcy; and (3) deprived Alex of any benefits of his 49.53% shareholder interest, including compensation, the right to vote, the right to participate in meetings

and other corporate governance, and the right to inspect the Company's books. A receiver is necessary in order to prevent further irreparable harm to Plaintiff and the Company.

Harm to minority shareholders is a form of irreparable harm. *E.g.*, *Bancroft Convertible Fund, Inc. v. Zico Inv. Holdings, Inc.*, 825 F.2d 731, 739 (3d Cir. 1987) (change in investment policies that might occur after successful tender offer would irreparably harm minority shareholders); *Gilmartin v. Adobe Resources Corp.*, C.A. No. 12467, 1992 Del. Ch. LEXIS 80, at *43 (Del. Ch. Apr. 6, 1992) (“The right to cast an informed vote is specific, and its proper vindication in this case requires a specific remedy such as an injunction, rather than a substitutionary remedy such as damages.”); *Eisenberg v. Chicago Milwaukee Corp.*, 537 A.2d 1051, 1062 (Del. Ch. 1987) (shareholder's right to make informed decision requires a specific remedy for which damages would be neither meaningful nor adequate); *In re Portec Rail Prods.*, 2010 Pa. Dist. & Cnty. Dec. LEXIS 157, at *45 (C.P. Allegheny Cnty. Apr. 21, 2020) (same); *Wurtzel v. Park Towne Place Apts. L.P.*, 62 Pa. D. & C.4th 330, 345 (C.P. Phila. 2011) (deprivation of voting rights is irreparable harm).

Defendant's wrongful conduct—which has continued unabated throughout this litigation—has impeded Alex's shareholder rights, causing irreparable harm.

C. A receiver is necessary to protect Plaintiff and the Company from further fraud, waste, and mismanagement by Defendant and the losses therefrom.

A receiver is needed to protect Alex and the Company from further disastrous losses, waste, and mismanagement. *See FTE Networks, Inc.*, 2023 U.S. Dist. LEXIS 222595, at *7-11(D. Del. Dec. 14, 2023) (Delaware federal court has the power to appoint a receiver of a Nevada corporation to avert further loss of assets through waste and mismanagement); *PNC Bank, N.A.*, 15 F.Supp.3d at 758-61 (appointing receiver due to plaintiff's likelihood of success on the merits, defendant's questionable financial position, lack of less intrusive remedies, acrimony presenting an imminent

threat to the business, and plaintiff's interests). Fiscal year 2024 was a complete disaster for the Company with over \$3.2 million in losses, and fiscal year 2025 is projected to be another large loss year with a \$1.3 million loss. The losses have already wiped out all shareholder equity and made it negative, and further losses will only sink the Company into a deeper hole, especially since Defendant's personal spending continues to this day. A receiver is needed to get the Company back on the road to profitability and current management is clearly not the answer. Allowing Defendant to remain in control will only result in more of the same poor results and continuing oppression of Plaintiff and irreparable harm.

D. No milder measures are appropriate.

There are no milder measures that will prevent further irreparable harm. Defendant has committed multiple breaches of his fiduciary duties, including diversion of corporate opportunities and running hundreds of thousands of dollars of personal expenses through the Company. Defendant's fraudulent actions will only continue until a receiver is put in charge.

E. The Company's financial condition is terrible.

Another factor that strongly supports the appointment of a receiver is the terrible financial condition of the Company as a result of Defendant's wrongful acts. As noted above, the losses for 2023 and 2024 alone have wiped out all equity, leaving the shareholders upside down. The \$1.3 million projected loss for 2025 will only make matters worse. Meanwhile, financial indicators suggest more bad news, as Defendant receives an exorbitant salary and benefits, and devotes his time to a new competing business.

F. Appointing a receiver will not do more harm than good.

Appointing a receiver will not do more harm than good—rather, it will give the Company some hope of survival. In light of what has happened to date, there is a compelling need to remove Defendant from control of the Company.

CONCLUSION

For all of the above reasons, Plaintiff respectfully requests that the Court appoint Louis B. Plung, CPA, as Receiver for the Company in order to prevent further irreparable harm to Plaintiff and the Company.

Date: September 23, 2025

Respectfully submitted,

/s/ Robert M. Barnes

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CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2025, a true and correct copy of the foregoing was electronically filed and served via operation of the Court's CM/ECF system, which will automatically send e-mail notification of such filing to the attorneys of record entitled to notice who are registered users of ECF.

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