

STATE OF NORTH CAROLINA  
NEW HANOVER COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
23 CVS 3575

ELIZABETH MAE WHITEMAN  
ROESEL and FENIX CONTRACTING  
INC.,

Plaintiffs,

v.

PHILIP ROESEL and FENIX  
INSURANCE CONTRACTING INC.,

Defendants.

**ORDER ON  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION  
AND  
DEFENDANTS' MOTION TO STAY**

1. **THIS MATTER** is before the Court on Plaintiffs' Motion for Preliminary Injunction, (the "PI Motion") (ECF No. 7) and Defendants' Motion to Stay, (the "Motion to Stay") (ECF No. 10) (together, the "Motions").

2. Plaintiffs move for a mandatory injunction requiring Defendants to return business records and other assets allegedly misappropriated from Fenix Contracting Inc. ("Fenix").

3. Defendants argue that Fenix was established during the individual parties' marriage and its ownership is now subject to an equitable distribution action in New Hanover District Court. They request a stay of this case pending resolution of the equitable distribution action.

4. Having considered the Motions, the Verified Complaint, the affidavit of Elizabeth Mae Whiteman Roesel, the related briefing, and other relevant matters of

record,<sup>1</sup> the Court hereby **GRANTS** Plaintiffs' PI Motion and **GRANTS in part** Defendants' Motion to Stay.

## I. FINDINGS OF FACT

5. The Court makes the following findings of fact, which are made solely to decide the Motion and are not binding in any subsequent proceedings in this action. *See Lohrmann v. Iredell Mem'l Hosp., Inc.*, 174 N.C. App. 63, 75 (2005) ("It is well settled that findings of fact made during a preliminary injunction proceeding are not binding upon a court at a trial on the merits.").

6. Plaintiff Elizabeth Mae Whiteman Roesel ("Liz") and Defendant Philip Roesel ("Phil") were married in September 2013. (Verified Compl. ["Compl."] ¶ 8, ECF No. 3, Affidavit of Elizabeth Mae Whiteman Roesel ["Liz Affidavit"] ¶ 3.) Liz and Phil then separated in 2021. (Compl. ¶ 13; Liz Affidavit ¶ 4.)<sup>2</sup>

7. In 2018, Liz formed Plaintiff Fenix Contracting Inc. ("Fenix"). (Compl. ¶ 9.) Fenix is a company that assists individuals in procuring insurance coverage. Its revenue is generated from commissions paid by insurance companies. (Liz Affidavit ¶ 19; Compl. ¶ 10.) Liz is the president and sole shareholder of Fenix. (Liz Affidavit ¶ 2; Compl. ¶ 9.) While Phil has performed compensated services for Fenix, he is not a shareholder, owner, board member, or employee of the company. (Compl. ¶ 12.)

---

<sup>1</sup> Pursuant to Business Court Rule ("BCR") 7.4, and at the request of all parties, the Court decides the Motions on the record without a hearing.

<sup>2</sup> Facts are as alleged in the Verified Complaint, (ECF No. 3), and not contested in the Answer, (ECF No. 5).

8. On 25 January 2023, Liz secured a Domestic Violence Order of Protection against Phil in New Hanover District Court. (Compl. ¶ 14; Liz Affidavit ¶ 9.) While the Order was in place, Liz did not visit the Fenix offices to attempt retrieval of business records or other property. The Order was lifted on 29 September 2023. (Compl. ¶ 15.)

9. In the meantime, on 8 June 2023, Phil filed a complaint seeking equitable distribution of marital property, including Fenix. Liz answered and asserted a counterclaim also seeking equitable distribution. These claims remain pending. (Mem. Supp. Defs.' Mot. to Stay ["Defs.' Br. Supp."] p. 2, ECF No. 11.)

10. Fenix generates a large volume of corporate records in the course of its regular business operations. (Liz Affidavit ¶ 10; Compl. ¶ 17.) These records are "related to insurance policies issued to insureds, the insurance carriers underwriting such policies, payroll information for agents performing compensated services for Fenix, and company banking/tax records[.]" (Compl. ¶ 17.) Furthermore, Plaintiffs assert that Fenix "generates and possesses information concerning its business methods, techniques, and processes that constitute trade secrets[.]" (Compl. ¶ 17.) Most of these records are in electronic format. (Liz Affidavit ¶ 10.)

11. Phil had access to Fenix's records in order to perform compensated services. (Liz Affidavit ¶ 11.) At some point following their separation, and without authorization, Phil took possession and control of Fenix's business records. He continues to control these records, some of which Plaintiffs contend are trade secrets.

(Compl. ¶¶ 16, 17, 19.) Phil also took control of Liz’s email address, the Fenix website, and Fenix’s telephone accounts. (Compl. ¶ 25.)

12. In July 2023, Phil formed his own company with a name similar to Fenix: Fenix Insurance Contracting Inc. (“FIC”). FIC is a direct competitor of Fenix. Plaintiffs contend that Phil “intentionally named his competitive business Fenix Insurance Contracting Inc. in order to mislead and take customers of Fenix, to capitalize on the preexisting goodwill and reputation of Fenix, and to harm Plaintiffs by interfering with their existing and prospective business relationships.” (Compl. ¶¶ 40, 41.) Phil is using Fenix’s corporate records to “operate and grow FIC.” (Liz Affidavit ¶ 12.)

13. Prior to filing the lawsuit, Plaintiffs demanded that Phil turn over possession and control of Fenix’s business records on two occasions—once in February 2023 and again in September 2023.<sup>3</sup> (Compl. ¶¶ 21-23.) Phil refused these demands. (Compl. ¶¶ 20-21, 24.)

14. In addition, Phil has incurred \$90,000 worth of advertising costs on Fenix’s Capital One card and redeemed \$70,000 worth of Fenix’s accrued Capital One cash rewards, both to benefit of his own company, FIC. (Compl. ¶¶ 30-33; Liz Affidavit ¶¶ 31-32.) Plaintiffs further allege that Phil has retained and delayed depositing at least \$3 million of checks made payable to Fenix. Plaintiffs have demanded the return of these checks, to no avail. (Compl. ¶¶ 23, 38.)

---

<sup>3</sup> Phil requested an extension of time to respond to the September demand. A follow up demand was sent on 4 October 2023. No response was received. (Compl. ¶ 24.)

15. Without access to its business records, email, website and telephone accounts, “Fenix is unable to fully serve its customers, lacks critical documentation regarding payroll and compensation structures, and cannot respond to regulatory inquiries.” (Liz Affidavit ¶ 18.) Many of the policies written by the agents appointed to Fenix are for Affordable Care Act (“ACA”) health care plans, and the 2024 open enrollment period for ACA plans runs from 1 November 2023 through 15 January 2024. (Liz Affidavit ¶ 21.) Without access to its records, Fenix stands to lose its ACA customers and a primary source of its revenue. (Liz Affidavit ¶ 22.)

16. After Phil refused Plaintiffs’ demands to return Fenix’s property and corporate records, Plaintiffs commenced this action on 18 October 2023. (Compl. ¶¶ 20-24.) The Verified Complaint asserts claims against Defendants for conversion, unfair and deceptive trade practices, civil liability for theft by employee/embezzlement, misappropriation of trade secrets, unjust enrichment, computer trespass, tortious interference with prospective contracts or economic advantage, and piercing the corporate veil. Plaintiffs seek damages, including punitive damages, and injunctive relief. (*See generally*, Compl.)

17. The case was designated as a complex business case on 25 October 2023 and assigned to the undersigned the same day. (ECF Nos. 1, 2.)

18. On 30 October 2023, Defendants filed their Answer and Affirmative Defenses to Plaintiffs’ Verified Complaint. (ECF No. 5.)

19. Plaintiffs filed their Motion for Preliminary Injunction on 2 November 2023, seeking return of Fenix’s business records and property.

Defendants filed their Motion to Stay the following day, arguing that this case should be stayed until there has been a determination of the individual parties' equitable distribution claims.

## II. CONCLUSIONS OF LAW

### A. PI Motion

20. The Court has jurisdiction over the parties and the subject matter of this action.

21. A preliminary injunction "is an extraordinary measure taken by a court to preserve the status quo of the parties during litigation." *Ridge Cmty. Invs., Inc. v. Berry*, 293 N.C. 688, 701 (1977). The movant bears the burden to show: (1) a likelihood of success on the merits, and (2) that it is likely to sustain irreparable loss unless the injunction is issued or, "if, in the opinion of the Court, issuance is necessary for the protection of plaintiff's rights during the course of litigation." *A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 401 (1983); *see also* N.C.G.S. § 1-485.

22. Likelihood of success means a "reasonable likelihood[.]" *A.E.P. Indus., Inc.*, 308 N.C. at 404. Irreparable injury is not necessarily injury that is "beyond the possibility of repair or possible compensation in damages, but that the injury is one to which the complainant should not be required to submit or the other party permitted to inflict, and is of such continuous and frequent recurrence that no reasonable redress can be had in a court of law." *Id.* at 407 (emphasis omitted).

23. Irreparable injury must be "real and immediate." *Daimlerchrysler Corp. v. Kirkhart*, 148 N.C. App. 572, 586 (2002). Moreover, merely alleging that

irreparable injury is occurring is not enough. *See United Tel. Co. of Carolinas v. Universal Plastics, Inc.*, 287 N.C. 232, 236 (1975). Plaintiff must “set out with particularity facts supporting such statements so the court can decide for itself if irreparable injury will occur.” *Id.*

24. Additionally, when deciding whether to afford preliminary injunctive relief, the Court must balance the potential harm the plaintiff will suffer if no injunction is entered against the potential harm to the defendants if an injunction is entered. *See Travenol Labs., Inc. v. Turner*, 30 N.C. App. 686, 694 (1976) (“A court of equity must weigh all relevant facts before resorting to the extraordinary remedy of an injunction”); *Addison Whitney, LLC v. Cashion*, 2017 NCBC LEXIS 23, at \*\*12-13 (N.C. Super. Ct. Mar. 15, 2017) (“[T]he trial court must weigh the potential harm a plaintiff will suffer if no injunction is entered against the potential harm to a defendant if the injunction is entered.” (citing *Williams v. Greene*, 36 N.C. App. 80, 86 (1978))).

25. Furthermore, the law recognizes a distinction between prohibitory and mandatory injunctions. “It (a court of equity) may, by its mandate, compel the undoing of those acts that have been illegally done, as well as it may, by its prohibitive powers, restrain the doing of illegal acts.” *Seaboard A.L.R. Co. v. Atlantic C.L.R. Co.*, 237 N.C. 88, 94 (1953). While a prohibitory injunction seeks to preserve the status quo, “[a] mandatory injunction is intended to restore a status quo and to that end requires a party to perform a positive act.” *Auto. Dealer Res., Inc. v. Occidental Life Ins. Co.*, 15 N.C. App. 634, 639 (1972); *see also Holleman v. Aiken*, 193 N.C. App. 484,

503 (2008) (“Mandatory injunctions are affirmative in character, and require positive action involving a change of existing conditions—the doing or undoing of an act.”).

26. A mandatory injunction ordinarily will be granted only when an injury is “immediate, pressing, irreparable, and clearly established.” *Auto. Dealer Res., Inc.*, 15 N.C. App. at 639; *see also* G. Gray Wilson, North Carolina Civil Procedure, Ch. 65, § 65-1 (Matthew Bender) (“A mandatory injunction . . . requires a greater showing of urgency[.]”). “If necessary to meet the exigencies of a particular situation, the injunctive decree may be both preventive and mandatory.” *Auto. Dealer Res., Inc.*, 15 N.C. App. at 639.

27. Ultimately, the decision to grant or deny a preliminary injunction rests in the discretion of the court. *Lambe v. Smith*, 11 N.C. App. 580, 583 (1971).

i. Likelihood of Success on the Merits

28. “Conversion is defined as: (1) the unauthorized assumption and exercise of the right of ownership; (2) over the goods or personal property; (3) of another; (4) to the exclusion of the rights of the true owner.” *Estate of Graham v. Morrison*, 168 N.C. App. 63, 72 (2005). In addition, “[w]here there has been no wrongful taking or disposal of the goods, and the defendant has merely come rightfully into possession and then refused to surrender them, demand and refusal are necessary to the existence of the tort.” *Horner Int’l Co. v. McKoy*, 2014 NCBC LEXIS 68, at \*6 (N.C. Super. Ct. Dec. 18, 2014) (quoting *White v. Consol. Planning, Inc.*, 166 N.C. App. 283, 310-11 (2004)).



29. “[P]roprietary information, including customer lists, contact lists, records and historical data[.]” may be the subject of a conversion claim. *See Se. Shelter Corp. v. Btu, Inc.*, 154 N.C. App. 321, 331 (2002) (holding that defendants converted plaintiffs’ proprietary information, including customer lists, contact lists, records and historical data).

30. However, merely making a copy of electronically-stored information does not support a claim for conversion if the plaintiff also has access to the information. “The essence of conversion is not the acquisition of property by the wrongdoer, but a wrongful deprivation of it to the owner.” *Addison Whitney, LLC v. Cashion*, 2017 NCBC LEXIS 51, at \*15 (quoting *Bartlett Milling Co. v. Walnut Grove Auction & Realty Co.*, 192 N.C. 74, 86 (2008)); *see also RoundPoint Mortg. Co. v. Florez*, 2016 NCBC LEXIS 18, at \*\*55 (N.C. Super. Ct. Feb. 18, 2016) (dismissing conversion claim where plaintiff did “not allege that Defendants copied and then deleted the information so as to deprive [plaintiff] from its continued use of the information”); *Horner Int’l Co.*, 2014 NCBC LEXIS 68, at \*8 (dismissing conversion claim where plaintiff did “not allege it was deprived of the information or excluded from use of the information allegedly converted by Defendant.”).

31. Here, Fenix has presented evidence that Phil has copied Fenix’s electronic records and is using them to operate FIC. (Liz Affidavit ¶ 12; Compl. ¶¶ 92-93.) Additionally, and importantly, Fenix has also presented evidence that it has been deprived of access to its business records. (Liz Affidavit ¶¶ 18, 22, 25; Compl. ¶ 56.) Prior to filing the lawsuit, Fenix demanded the return of all its

property and corporate records, including access information necessary to log in to its email accounts, website, and various other accounts. (Compl. ¶ 23.) Its demands were rejected. (Compl. ¶¶ 20-21, 24, 26.) The Court concludes that Fenix, as the owner of this property, is reasonably likely to succeed on the merits of its claim for conversion.<sup>4</sup>

ii. Immediate, Pressing, Irreparable, and Clearly Established Injury

32. Plaintiffs have alleged that Phil's refusal to give them access to Fenix's business records has harmed Fenix in the following ways:

- a. Prevented Plaintiffs from exercising proper control over Fenix;
- b. Prevented Fenix from protecting its trade secrets and confidential information;
- c. Prevented Fenix from ensuring that the personal data of its agents, insureds, and contractors are protected from unauthorized disclosure;
- d. Prevented Fenix from confirming that its insureds have received the products they contracted for;
- e. Rendered Fenix unable to prepare necessary tax returns;
- f. Prevented Fenix from confirming that it has satisfied tax and other company financial obligations, potentially exposing both to significant liability;
- g. Prevented Fenix from timely identifying sales records and ensuring agents working as independent contractors of Fenix are timely and properly compensated; and
- h. Placed Fenix at risk of being forced to wind down and cease operations.

---

<sup>4</sup> The Court does not reach the same conclusion with respect to Plaintiffs' other claims, some of which lack the required specificity. See e.g., *Krawiec v. Manly*, 370 N.C. 602 (2018); *Beverage Sys. of the Carolinas, LLC v. Associated Bev. Repair, LLC*, 368 N.C. 693 (2016). Additionally, legal remedies are available for several of the claims.

(Compl. ¶ 27.)

33. Specifically, Fenix has presented evidence that open enrollment for its ACA customers is currently underway, and its inability to access its business records renders it unable to manage their needs. As a result, if access to its records is not restored, Fenix will lose the majority of its client base, its expected annual revenue will “dwindle to next to nothing,” and its relationships with the independent contractor-agents who write these policies will be jeopardized. Fenix asserts that it will likely be forced to wind down. (Liz Affidavit ¶¶ 21-25.)<sup>5</sup>

34. The Court of Appeals has held that where a defendant’s actions would render a plaintiff unable to meet its current expenses, cause indebtedness to become immediately due, result in plaintiff’s immediate insolvency, cause plaintiff’s network of agents to disintegrate, and likely cause the plaintiff to cease to exist as a going business, “[t]his constitutes . . . sufficient evidence of an immediate, pressing, and irreparable injury[.]” *Auto. Dealer Res., Inc.*, 15 N.C. App. at 640.

35. The Court concludes that Plaintiffs have met their burden to show immediate, pressing and irreparable injury.

36. Additionally, Plaintiffs have not delayed in seeking injunctive relief. The parties’ domestic situation leading to entry of a Domestic Violence Order of Protection influenced the parties’ actions. Phil did not form his competing business until 12 July 2023—three months before Plaintiffs commenced this lawsuit.

---

<sup>5</sup> Additionally, Fenix claims that without the business records it seeks, it will be unable to prepare its tax returns. (Liz Affidavit ¶ 18; Compl. ¶ 27.)

(Compl. ¶ 40.) Plaintiffs most recent follow-up demand was made on Phil on 4 October 2023. (Compl. ¶ 24.) Under the circumstances, Plaintiffs' PI Motion is timely.

iii. Balancing the Equities

37. As stated above, Plaintiffs have presented evidence that without access to its business records and property, Fenix will likely be forced to wind down. (Liz Affidavit ¶ 15.) Conversely, Defendants argue that Fenix is marital property and that Phil is only taking what he believes the District Court will award. But that decision is not Phil's to make. At this point in time, the business records and property belong to Fenix, not him.

38. On this record, the Court concludes that Plaintiffs would be immediately and irreparably harmed in the absence of an order requiring Defendants to turn over to Fenix its property and access to its business records. The harm is ongoing, and Plaintiffs have no adequate remedy at law. The Court therefore concludes that a preliminary injunction is appropriate.

B. Motion for Stay

39. Defendants do not move for dismissal of this action. Instead, Defendants contend that the issues in this action are interrelated with those in the District Court action, and they request a stay. (Defs.' Br. Supp. p. 3.) Specifically, Defendants argue that because Fenix is marital property, most of Liz's claims "will not hold water if the district court distributes any portion of Fenix to Phil." (Defs.' Br. Supp. pp. 5-6.)

40. Plaintiffs respond that a stay would cause them to suffer irreparable harm. They present evidence to support their assertion that, without access to their business records and property, Fenix cannot meet its ACA customers' needs, putting the business at risk of shuttering. Plaintiffs also argue that Phil is using Fenix's assets to benefit FIC, a competitor that he recently established. Using the equitable distribution action to leverage a stay now, they contend, would reward Phil by allowing him to benefit from his tortious behavior. They conclude that how much of an ownership interest in Fenix Phil might be awarded in equitable distribution remains to be seen but, in the meantime, he should not be able to strip Fenix to build his own competitor.

41. Whether to grant a stay rests in the discretion of the court. *See Watters v. Parrish*, 252 N.C. 787, 791 (1960) (“Whether one lawsuit will be held in abeyance to abide the outcome of another rests in the sound discretion of the trial judge, and his action will not be disturbed on appeal, unless the discretion has been abused, for there is power inherent in every court to control the disposition of causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”).

42. A stay of one case is appropriate when there is a “clear interrelationship of the issues” between two cases because allowing “both actions to proceed concurrently would be to invite conflict between the resolution of interrelated issues in the two actions.” *Baldelli v. Baldelli*, 249 N.C. App. 603, 608 (2016) (remanding with instructions to hold second-filed action in abeyance); *Jessee v. Jessee*, 212 N.C. App. 426, 439 (2011) (where there is a “clear interrelationship between the two cases,

such that the equitable distribution portion of the [District Court case] should be resolved prior to the determination of the [Superior Court case] . . . [the Superior Court case] should be held in abeyance pending resolution of the [District Court case] and the results of that equitable distribution case taken into consideration in the resolution of the [Superior Court case].”).

43. The Court concludes that, after returning Fenix to the status quo, to proceed concurrently with the District Court action would be to invite conflict. In briefing, both sides occasionally speak in terms of harm that will allegedly be suffered by either Liz or Phil. But until a division of the marital property is decided, it is premature to decide whether Liz or Phil individually has been damaged. Instead, the Court’s focus at this stage is on conserving the entity, Fenix, until the District Court can address ownership of Fenix in equitable distribution.

44. Once Fenix is secure, however, it makes sense to stay this litigation until the District Court sorts out the marital property, including ownership of Fenix. The District Court’s determinations could impact subject matter jurisdiction. It could result in the assertion of different claims. It almost certainly will impact each individual’s resources to fund litigation and/or satisfy a judgment. *See Ward v. Fogel*, 237 N.C. App. 570, 577 (2014) (observing that the plaintiff was seeking compensatory and punitive damages and, if successful on the claims, “may get a judgment which could be enforced against [defendant’s] separate property.”).

45. Citing *BIOMILQ, Inc. v. Guiliano*, 2023 NCBC LEXIS 24 (N.C. Super. Ct. Feb. 10, 2023), Plaintiffs argue that this Court denied a motion to stay in a

factually similar situation, and they urge the Court to do the same here. While *BIOMILQ* is factually similar in some ways, the property that the former husband allegedly misappropriated from his former wife in that case was, for the most part, acquired post-separation, and was not marital property subject to equitable distribution. Therefore, this Court determined that the two cases could proceed simultaneously without the risk of conflicting results or judicial inefficiencies because the Superior Court case did not involve the division of marital property. *Id.* at \*\*46. The circumstances in the current case differ from those presented in *BIOMILQ*.

### III. CONCLUSION

46. WHEREFORE, based on the foregoing FINDINGS and CONCLUSIONS, the Court, in the exercise of its discretion and for good cause shown, ORDERS that pending final resolution of this civil action, and unless and until otherwise ordered by this Court, Defendants and all other persons in active concert or participation with any Defendant shall immediately return to Fenix:

a. Access to the following electronic accounts:

- i. Username and password for liz@fenixcontracting.com email address, to include all received and sent emails from 1 January 2023 to the date of production;
- ii. Username and password for any other email addresses associated with Fenix and/or Ms. Roesel, to include all received and sent emails from 1 January 2023 to the date of production;

- iii. Username and password for any healthcare.gov account associated with Fenix and/or Ms. Roesel;
- iv. Username and password for any healthsherpa.com account associated with Fenix and/or Ms. Roesel;
- v. Username and password for any AgencyBloc account associated with Fenix;
- vi. Log in credentials and domain ownership for www.fenixcontracting.com;
- vii. Log in credentials and domain ownership for www.healthinsurancerep.com;
- viii. Log in credentials and domain ownership for www.sealevelsocial.com;
- ix. Log in credentials associated with Fenix's Purechat account(s);
- x. Log in credentials associated with Fenix's Tawk.to account(s);
- xi. Log in credentials associated with Fenix's Ninja Forms account(s);
- xii. Username and password for applications@fenixcontracting.com email address, to include all received and sent emails from 1 January 2023 to the date of production; and
- xiii. Ms. Roesel's personal Facebook account used for advertising associated with Fenix.

b. The following original documents and other property:

- i. Any and all policies providing Errors & Omissions coverage to Fenix;



- ii. Any and all policies providing Errors & Omissions coverage to any appointed agents of Fenix;
- iii. The complete file for each and every policy sold by Fenix, including, but not limited to, all work papers and written communications;
- iv. Any and all contracts or agreements between Fenix and its appointed insurance agents, including, but not limited to, any electronically-issued and/or electronically-signed contracts;
- v. Any and all 1099s issued to Fenix or Elizabeth Roesel by insurance companies;
- vi. Any and all 1099s issued to insurance agents by Fenix for the time period 2018-2020;
- vii. Any and all pending Complaints against Fenix or any of its appointed agents;
- viii. Any and all information submitted or completed by potential insureds providing information to verify intent to enroll in a health insurance policy, including, but not limited to, forms, voicemails, text messages, list of IP addresses, device and/or browser records, time stamped records, etc.;
- ix. Checks issued by insurance companies to Fenix, to include but not limited to checks from Ambetter, Anthem, Cigna, and Medica; and
- x. Apple iPhone associated with Fenix, with phone number 910-508-9880.

- c. To the extent access to the information is under Defendants' control and is not otherwise available to Plaintiffs, Defendants shall produce the following:
- i. List of all insurance companies under which Fenix and any of its appointed agents have or have had active policies;
  - ii. List of all bank accounts associated with Fenix, including, but not limited to, all accounts where checks or direct deposits to Fenix are or were deposited;
  - iii. List of any and all Field Marketing Organizations (FMOs) with which Fenix has worked;
  - iv. List of any and all Independent Marketing Organizations (IMOs) with which Fenix has worked;
  - v. List of any and all National Marketing Organizations (NMOs) with which Fenix has worked;
  - vi. List of all commission rates (both historic and current) for each appointed insurance agent of Fenix for each insurance company with which Fenix has or has had active policies;
  - vii. List of all bonus structures (both historic and current) for each appointed insurance agent of Fenix;
  - viii. If the commission rates change for any insurance agents based on the active policy's effective date, provide a list of any non-standard commission rates for each appointed insurance agent associated with

each insurance company with which Fenix has or has had active policies; and

- ix. Names and contact information for all broker representatives for insurance companies with whom Fenix has or has had active policies.
- d. This Order shall become effective upon the Plaintiffs' posting of security in the amount of \$1,000.00, which the Court concludes, in its discretion, is reasonable and appropriate as a condition of granting the preliminary injunction. *See* N.C.G.S. § 1A-1, N.C. R. Civ. P. 65(c). Any party may move to adjust the amount of the security required upon a showing of good cause.
- e. The parties shall confer and submit a report regarding the status of the equitable distribution action via email to the Court's clerk every 90 days and upon final order of the District Court; and
- f. Except as herein stated, this action is stayed pending further order of this Court. Any party may utilize the procedures set forth in Business Court Rule 10.9 at any time to request a status conference to examine whether to lift the stay.

IT IS SO ORDERED, this 29th day of November, 2023.

/s/ Julianna Theall Earp

---

Julianna Theall Earp  
Special Superior Court Judge  
for Complex Business Cases