UNITED STATES BANKRUPTCY COURT

DISTRICT OF IDAHO

In re: GREGGORY J. TAHMISIAN, Debtor.	Case No. 23-00002-BPH
GREGG TAHMISIAN, an individual, and SOLID STATE OPERATIONS, INC., an Idaho corporation, Plaintiffs, v. NETACENT, INC., an Idaho corporation; ISAAC BARRETT, an individual; QUINN WATT, an individual; JORDAN BARRETT, an individual; and JOHN MCALLISTER, an individual, Defendants.	Adversary No. 23-06018-BPH Chapter 11 (Subchapter V)
NETACENT, INC., Counterclaimant, v. GREGG TAHMISIAN and SOLID STATE OPERATIONS, INC. Counter-defendants.	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Appearances:

Gregg Tahmisian, pro se Debtor/Plaintiff/Counter-Defendant, Boise, Idaho.

Elijah M. Watkins, Hailee N. Elledge, Chris D. Wade, DORSEY & WHITNEY LLP, Boise, Idaho, counsel for Defendants/Counter-Claimants Netacent, Inc., Isaac Barrett, Quinn Watt, and Jordan Barrett.

Tracy Lamar Wright, Hawley Troxell Ennis & Hawley LLP, Boise, Idaho, counsel for Plaintiff/Counter-Defendant Solid State Operations, Inc.

I. Introduction

A small group of particularly bright individuals with specialized knowledge regarding computer programming and the administration of unemployment claims by state agencies developed a software program that would improve claims handling by states and effectively modernize management of unemployment claims. Fortuitously, this was precisely the software program many states needed when Covid first occurred and unemployment claims spiked. Unfortunately, different visions, personalities, and pettiness would prove insurmountable and spark litigation.

This small group of bright individuals included Gregg Tahmisian ("Tahmisian"), Isaac Barrett ("Isaac"), Jordan Barrett ("Jordan"), Quinn Watt ("Watt"), and John McAllister ("McAllister"). Each of these individuals was a shareholder in Netacent, Inc., ("Netacent"). Over the years, these individuals served on Netacent's Board of Directors ("Board") and as officers of the corporation. As time went on, the working relationship between the two largest shareholders, Tahmisian and Isaac, deteriorated. Increasingly, they had very different visions about Netacent's future. Tahmisian was attentive to a broad range of opportunities and firmly grasped the big picture. Isaac was less ambitious, more granular, and content to focus on software development one project at a time.

As the tension between Tahmisian and Isaac increased, Jordan and Watt bounced back and forth between them. In some instances, Jordan and Watt would align with Tahmisian. In other circumstances, they would rally around Isaac. Tahmisian responded to this discord and Isaac's limited vision for Netacent by creating a separate corporation, Solid State Operations, Inc., ("Solid State" or "SSO"), of which he was the sole shareholder. Through SSO, Tahmisian pursued the opportunities Isaac resisted. To do so, he moved employees from Netacent to SSO, used SSO revenue to pay Netacent expenses, and exhibited a thorough disregard for corporate formalities. While much of this was known to Watt, McAllister, and Isaac, they initially had no objection to SSO's activities.

McAllister, through a combination of age and wisdom, seemingly tried to remind everyone that working together should be the goal. Despite his counsel, infighting, litigation, and deception resulted in breaches of duty by various directors and officers, including Tahmisian, Isaac, Jordan, and Watt. Notwithstanding their collective failure, beginning in October 2021, Isaac, Jordan, and Watt accused Tahmisian of theft, fraud, embezzlement, and conflict of interest.

Despite subsequent discovery and a record that undermines many of these claims, Isaac, Jordan, and Watt refused to acknowledge or take responsibility for their own breaches of duty. Indeed, the record shows that collectively, they have self-servingly sought to enforce provisions in the corporation's governing documents against Tahmisian, while employing a different standard for themselves. Further, Isaac's refusal and inability to work with Tahmisian or SSO resulted in a series of missed opportunities for both SSO and Netacent. In the end, shareholder disputes and pettiness significantly damaged both companies.

This Court's decision disposes of four adversary proceedings that were consolidated for trial. The Court conducted a nearly 16-day trial spanning two-and-a-half months, and following completion of the trial transcript and submittal of proposed findings of fact and conclusions of law by each party, the issues presented were deemed under advisement. As the Court drafted its decision, the parties advised of their own independent settlement efforts. These efforts proved futile. Having now considered the record, testimony presented, briefs, and arguments of the parties, as well as the applicable law, the Court issues this decision. Fed. R. Bankr. P. 7052; 9014.

II. Subject Matter Jurisdiction, Authority, and Venue

The Court has subject matter jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157(a) and 1334(b) as referred to it by the district court pursuant to General Order No. 349. Some of the claims and counterclaims represent "core" proceedings and are within the Court's constitutional authority to adjudicate via final order. 28 U.S.C. §§ 157(b)(2)(B) and (b)(2)(I). In addition, some claims arise under federal law, including federal trademark law, and pursuant to the same order of reference, this Court has jurisdiction over those claims under to 15 U.S.C. §§ 1121(a), 1125(d) and 28 U.S.C. §§ 1331 and 1338.

Venue is appropriate in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

III. Procedural Background

On January 4, 2023, Debtor and Counter-Defendant Tahmisian filed a bankruptcy petition.[1] After his case was filed, Netacent filed an adversary proceeding alleging its claims against Tahmisian should be excepted from discharge under §§ 523(a)(2)(A), (a)(4), and (a)(6).[2]

[1] *In re Tahmisian*, 23-00002-BPH.

[2] *Netacent, Inc. v. Tahmisian,* 23-06016-BPH.

Shortly after Netacent filed the adversary proceeding, Tahmisian and SSO filed a separate adversary proceeding against Netacent, Isaac, Watt, Jordan, and McAllister.[3] As the adversaries progressed, the parties removed two pending state court cases to this Court.[4] Following a motion filed by Tahmisian, the removed cases were consolidated with the instant adversary proceeding for disposition.[5] The parties consented to this Court's determination of all issues raised in the adversary proceedings and removed matters.

IV. Findings of Fact[6]

A. Netacent, an Idaho Corporation

Netacent is a software development company. From its inception, Netacent was and continues to be a software development company that specializes in assisting state workforce agencies with their transition from mainframes to cloud-based technologies. At the time of trial, it had successfully completed one transition for the Alabama Department of Labor ("ADOL") and was in the process of assisting Hawaii with a similar transition. Integral to these transitions is "Data Station," a proprietary software product developed at and owned by Netacent.

Netacent is an Idaho corporation. Initially, its only shareholders were Isaac and Tahmisian. According to its articles of incorporation, "no shareholder of the corporation may sell or transfer shares except to another individual who is eligible to be a shareholder of the Corporation."[7] This is the only limitation on share transfers in the articles. Each share is entitled to one vote and the only limitation on aggregating votes amongst shareholders relates to votes for the Board, providing "[s]hareholders shall not have the right to cumulate their votes for Board of Directors."[8]

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[3] *Tahmisian, et al., v. Netacent Inc., et al.,* 23-06018-BPH (the source of the bulk of the claims and counterclaims addressed in this decision).

[4] *Tahmisian v. Netacent, Inc.*, 23-06019-BPH (removed state court case, CV01-22-01027 (4th Judicial District, County of Ada, State of Idaho, Ex. 3062); and *Netacent, Inc. v. Tahmisian, et al.,* 23-06020-BPH (removed state court case, CV01-21-17241, 4th Judicial District, County of Ada, State of Idaho).

[5] Docs. 23, 32.

[6] Portions of declarations filed by Tahmisian in the adversary proceeding were admitted at trial in lieu of direct testimony, subject to clarification by Tahmisian as well as cross examination. A redline of those portions admitted, as well as those struck out and not admitted, is found in the record at Doc. 253, and references to the facts stated therein will cite to Doc. 253.

[7] Ex. 2304-4.

[8] Ex. 2304-5 at ¶ 4.4.

The Board was vested with the power to exercise "[a]ll corporate powers" and to manage "the business and affairs of the Corporation."[9] The "authorized number of directors of the Corporation may be fixed or changed from time to time, by amendment to the bylaws." [10] A year after incorporation, Netacent adopted bylaws.[11] The bylaws echo the articles and provide that "management of all affairs, property, and interests of the corporation shall be vested in the Board."[12] Further, the president is subject to control by the Board.[13]

Subject to the Board's control, the president is authorized to enter agreements and execute contracts and instruments as necessary for conducting business, unless the Board designates another procedure.[14] The bylaws further provide that checks, notes, drafts, and demands for money shall be signed by the officer or officers from time to time as designated by the Board.[15] The president was authorized to sign these items as well. The bylaws require a simple majority of the Board to transact business.[16]

The bylaws establish when and how meetings shall be called and held by shareholders and the Board. The annual shareholder meeting was scheduled to be the first Monday in July.[17] Special meetings of shareholders could be called at any time by the President, Board, or the holders of not less than 5% of all shares entitled to vote at a meeting.[18] Regular meetings of the Board could be held without notice, while the annual meeting occurred immediately after the

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[9] Ex. 2304-5 at ¶ 6.1.

[10] Ex. 2304-5; Ex. 2198-41, 185 at ¶ 9.

[11] It is worth noting that for purposes of summary judgment, Isaac signed a declaration regarding the authenticity of one set of bylaws and for purposes of trial, Netacent introduced a different version of the bylaws. Compare Doc. No. 46-24, Ex. 1, with Netacent Trial Exhibit 2004.

[12] Ex. 2004 at ¶ 4.1.

[13] *Id.* at ¶ 5.2.

[14] *Id.* at ¶ 10.1.

[15] *Id.* at ¶ 10.2.

[16] *Id.* at ¶ 4.9.

[17] *Id.* at ¶ 2.2.

[18] *Id.* at ¶ 2.4.

annual shareholder meeting in July.[19] A special meeting of the Board could be called by the President, Vice President, Secretary, or Treasurer, or any two or more directors.[20]

B. Netacent's Largest Shareholders

1. Isaac Barrett – the "Prodigy"

By all accounts, Isaac is a talented programmer and the "architect" of Data Station. Data Station was developed by Isaac and some of the other shareholders after they were fired by the Idaho Department of Labor ("IDOL"). IDOL paid Isaac and others to develop software that would permit it to manage unemployment claims more efficiently and transition away from older technology. The Idaho version of Data Station is "iUS." Isaac was also the "architect" of iUS.

Isaac's knowledge and familiarity with iUS and Data Station was singular. No one else at Netacent had the same ability or expertise needed to deliver Data Station software to state workforce agencies. As Data Station's architect, it is undisputed that Isaac worked hard to develop and deliver the product. This unrivaled expertise also gave him opportunity—and leverage. Isaac could work when he wanted or not and otherwise act with impunity, because he could always quit and take his expertise with him. He could and did use this leverage to ensure Netacent employed his family members and provided them with stock in the company. So long as Data Station was Netacent's only product and source of revenue, Netacent, its employees, and its shareholders were entirely dependent on Isaac.

2. Greg Tahmisian – the "Promotor"

From its formation through October 2021, Tahmisian was singularly responsible for Netacent's success in the marketplace. Tahmisian promoted Netacent and Data Station tirelessly but, unlike Isaac, he had different vision for the company. Tahmisian was interested in opportunities that would diversify Netacent's revenue streams and eliminate its dependence on a single source of revenue, Data Station. Tahmisian was willing to promote Netacent and pursue a broad range of opportunities in the state workforce agency sector.

Through his efforts, Netacent was awarded a request for proposal ("RFP") with the Alabama Department of Labor ("ADOL") in October 2017. As the ADOL delivery date approached, Tahmisian lived in Alabama and developed relationships with ADOL and its employees. Tahmisian was the public face of Netacent in Alabama, and increasingly with other state workforce agencies. From 2013 through October 2021, Tahmisian was president of Netacent. During this period, he regularly sought the advice and guidance of McAllister.

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[19] *Id.* at ¶ 4.5.

[20] *Id.* at ¶ 4.6.

3. John McAllister – the "Coach"

McAllister was an astute judge of an individual's strengths and weaknesses and did his best to "coach" Tahmisian and Isaac after joining Netacent. McAllister had successfully supervised Isaac and Tahmisian before retiring from IDOL. After McAllister retired from IDOL, Isaac, Tahmisian, and Watt were fired.

The firing occurred, at least in part, because Tahmisian and Isaac were "high maintenance."[21] While still employed by IDOL, Tahmisian and Isaac had formed Netacent. McAllister testified that Tahmisian was constantly promoting the newly formed Netacent in an effort to increase its business opportunities with IDOL— "trying to get a relationship with the Department." "Isaac had his issues, too. He sometimes – they were supposed to have sprint meetings or stuff, and he was supposed to be there, and he wouldn't show up, you know, stuff like that."[22]

McAllister joined Netacent after IDOL fired Isaac, Tahmisian, and Watt. The record shows that more so than any other shareholder, director, or employee associated with Netacent, McAllister consistently focused on achieving the best outcomes for the company and its customers. To do so, he served as a sounding board for Tahmisian. He also served as a buffer between Tahmisian and Isaac as the competing visions and ideas of the "Prodigy" and "Promoter" emerged. His advice to Tahmisian was important as Tahmisian juggled his responsibilities as officer, Board member, and shareholder. Isaac was not easy to coach.

4. Jordan Barrett and Quinn Watt – the "Swing Votes"

Jordan and Watt each had individual roles and responsibilities at Netacent. Pertinent to the issues before the Court, however, their tendency to be heavily influenced by Tahmisian's and Isaac's strong personalities make their contributions in this case somewhat more difficult to define. From the beginning, Jordan and Watt had the potential to cast shareholder votes that would break any deadlock that might result from Isaac and Tahmisian voting differently. Their independent exercise of this power diminished as time went on.

In 2015, Watt received a 5% interest in Netacent from both Isaac and Tahmisian, resulting in stock ownership interests as follows: Tahmisian, 45%; Isaac, 45%; and Watt, 10%. In March 2017, Isaac threatened to leave Netacent if Tahmisian refused to give Jordan shares in Netacent. Ultimately, Tahmisian acquiesced and transferred 1% of his stock to Jordan. Isaac did the same resulting in Jordan having 2% of Netacent stock. Just a month later, Isaac indicated he

[21] Trial Tr. 1392:2–14.

[22] *Id*.

did not trust Watt and Tahmisian, demanding that Jordan receive an additional 4% interest from Tahmisian.[23]

In response to Isaac's demand, Tahmisian sought McAllister's advice both about this current threat as well as other demands Isaac had made.[24] Despite McAllister's counsel on the importance of accountability and the dangers of nepotism, Tahmisian ultimately gave into Isaac's demand and Jordan received an additional 4% from Isaac and Tahmisian, resulting in a 10% interest in Netacent, and a reduction in Tahmisian and Isaac's respective interests to 40% each. At the conclusion of these transfers, stock ownership amongst these four was: Isaac, 40%; Tahmisian 40%; Watt 10%; and Jordan 10%.

In 2018, Watt recognized Isaac was divisive and a source of conflict that undermined management. However, later in 2021, Watt proved willing to vote in unison with Isaac and to abandon positions he had previously taken. Similarly, the record shows Jordan is particularly susceptible to influence as an officer, shareholder, and director.

After McAllister joined Netacent, he also received a 10% interest in the company. As a result, stock interests in Netacent were allocated as follows: Tahmisian and Isaac each owned 32%; McAllister, Watt, and Jordan each owned 10%. Ownership of the remaining 6% evolved, but ultimately included Isaac's sister Dominique, who owned a 2% interest in Netacent.[25]

C. Netacent's Board of Directors, Officers, and Shareholders Meetings 2013 to 2021

1. 2013 – 2017

From July 2013 through November 2017, Netacent's shareholders and Board met annually. As Isaac and Tahmisian transferred shares to Watt, Jordan, and McAllister, the size of the Board was also increased and grew from three to five. Although the number of directors was

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[23] The record provides no evidence of the source of Isaac's distrust at this time. However, his inclination towards distrust grew and by the Fall of 2021, he was secretly recording conversations.

[24] Ex. 2259. Tahmisian's email identifies a series of problems that would remain problems in the years to follow. These included fears surrounding a Barrett family voting block that constituted a majority, nepotism, and accountability. It also lends credence to his testimony that Isaac was never interested in growing Netacent, preferring instead a small, family-dominated company at which he could exclusively decide how much and when he worked without answering to anyone. Tahmisian could not have predicted the later litigation that would ensue, yet this email seemingly captures the challenges Netacent would face in the future.

[25] The remaining 4% is less relevant for this dispute.

initially disputed at trial, Tahmisian later conceded the Board has five directors.[26] With a five-member Board, the presence of three directors constituted a quorum and was sufficient to transact business.[27]

Shareholder and Board meetings from 2013 through 2017 dealt with routine matters, such as adopting a corporate seal, presenting share certificates,[28] electing officers, and amending bylaws.[29] Isaac was designated as the stock transfer agent for Netacent.[30] Initial officer salaries were $0.[31] A year later in 2014, officer salaries were increased to $150,000, but were deferred until Netacent could pay them.[32] During this period, the record suggests efforts were made by Isaac, Tahmisian, and later Watt, Jordan, and McAllister to have annual meetings, and maintain some corporate formalities.

2. 2018 - 2021

In the years that followed, specifically 2018 through 2021, corporate formalities were abandoned and the evidence at trial shows neither a shareholder nor Board meeting was held between November 3, 2017, and October 28, 2021. During this period, the stock transfer book was not updated as transfers of stock were made, and minutes from meetings are non-existent. Corporate recordkeeping was an afterthought.

At trial, Jordan, Watt, and others blamed Tahmisian for the lack of shareholder and Board meetings. According to their testimony, he was the president during this period and therefore responsible for calling and organizing meetings of the shareholders and Board. Despite laying the blame at Tahmisian's door, this excuse is inconsistent with the bylaws. Netacent's five Directors included Tahmisian, Isaac, Watt, Jordan, and McAllister, and each had the ability to call Board meetings.

Pursuant to the bylaws, regular Board meetings could be held without notice and business could be conducted if a quorum was present. As a result, any combination of Isaac, Watt, Jordan,

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[26] Trial Tr. 3810:23–3811:19, 3820:13-15. As will be discussed below, all sides to this dispute complain about lack of corporate formalities on one hand yet rely on them to support their arguments on the other.

[27] Ex. 2004-6 at ¶ 4.9; Trial Tr. 3811:20–23.

[28] Ex. 2304-2.

[29] *Id*.

[30] Doc. 253-1 at ¶ 12; Trial Tr. 2974:6-8.

[31] Ex. 2304-2.

[32] Ex. 1017.

and McAllister could have met and conducted business as a Board without Tahmisian, so long as a quorum was present. Similarly, Isaac, Watt, Jordan, and McAllister could have called a shareholder meeting because together they owned a majority of Netacent's stock. This changed in February and June 2018, when Watt and McAllister sold their stock to Tahmisian. Watt sold his stock in February 2018, and McAllister did the same in June 2018.

Watt and McAllister sold their stock to Tahmisian because the management dynamic was increasingly dysfunctional. Decisions were made by "whoever argues the longest and makes the discussion the most painful, wins."[33] This dynamic and the recognition by McAllister and Watt that Tahmisian was better suited to lead Netacent than Isaac, resulted in Watt and McAllister selling their 10% interests in Netacent to Tahmisian. As a result of these transactions in February and June 2018, Tahmisian acquired 52% of Netacent's shares and reasonably believed that he was its largest shareholder.

Contrary to the blame that Jordan, Watt, and Isaac attribute to Tahmisian, the Board did not meet from November 2017 through October 2021 because the individual Board members abandoned their responsibilities and abdicated their duty to manage the affairs of the corporation and exercise control over the President. There are many explanations for the Board's lack of action, but generally Tahmisian, Isaac, Watt, and McAllister testified the demands of the ADOL RFP was a higher priority than formal governance. During this period, the Board neither received nor requested financial statements like the ones prepared prior to November 2017.[34]

D. Growing Pains, Financial Struggles, and Conflicting Visions for Netacent

Following their termination from IDOL in 2015, Tahmisian, Isaac, and Watt developed a business plan for Netacent. Not surprisingly, the business plan involved taking the technology that Idaho had paid them to develop for IDOL, and improving, modifying, and marketing it to other states for Netacent's benefit. In approximately March 2016, Tahmisian created and presented Netacent's business plan. It included an organizational chart and description of the company's potential customers: the workforce agencies of each state. Netacent would position itself as a competitor to Idaho and its iUS system.

Netacent was first and foremost a software developer and service provider. Its emphasis on software development corresponded to Isaac's integral role developing iUS and Netacent's interest in improving and rebranding iUS as Data Station. For Isaac, software development was Netacent's mission. While he indulged conversations about Tahmisian's more ambitious vision, which included creating a platform and providing state workforce agencies a broader range of services than just software development, Isaac never committed to it.

Central to Tahmisian's broader vision was the development of a "platform" that allowed state agencies to utilize software from multiple developers in a unified and efficient system. Rather than develop a single platform that was only compatible with a single software,

[33] Ex. 1029 p. 5.

[34] Trial Tr. 3465:14–3466:4.

Tahmisian recognized the best outcome for workforce agencies may include the flexibility of combining specific software developed by Netacent with specialized software developed by other companies. Not every state would want to be "captive" to a single software developer and product. Ultimately, Tahmisian and Isaac never agreed.

Like every start-up, Netacent had no steady stream of revenue and its survival depended on loans and investment. Although Netacent was awarded the ADOL RFP in late 2017, it was not entitled to payment until certain milestones were achieved, with the first payment likely in late 2019. As a result, from 2017 through late 2019, Netacent's financial existence was almost entirely dependent on Tahmisian's ability to arrange loans for Netacent. Tahmisian's family made significant loans to the company, while Isaac's family also helped with more modest loans during this period.

These loans funded payroll expenses, and when the funds were insufficient, employees agreed to accept less than their full wage in exchange for Netacent's promise to pay the balance when it had the resources to do so. In essence, employees, including the other shareholders, agreed that certain amounts due would be deferred and paid at a later date when Netacent had the funding to do so.[35]

The challenges of working with Isaac required increased attention during this period. Tahmisian and McAllister considered different approaches, exemplified by one email from Tahmisian:

> There are steps that we can take to mitigate the impact of these personality traits and to promote harmony. For instance, in discussions with my dad, who's a psychologist, he has advocated the kid gloves approach to Isaac; be as friendly and accommodating as possible; try to avoid or delay confrontation; try to give him what he wants so that the company can get what it needs from him. It has its difficulty at times, but so far that approach seems to have worked pretty well. On the bigger issue of CTO [chief technical officer], I think we'd be doing the company and Isaac a disservice by putting someone with that personality in that role.[36]

McAllister responded to Tahmisian's email and elaborated on the challenges that accompanied Netacent's technical dependence on Isaac:

> Gregg, your dad's advice is excellent . . . . The tricky part in separating technical from management is that management includes, at least indirectly, managing

[35] Despite personally benefitting from this arrangement, Isaac and others testified that deferred compensation did not exist at Netacent. This testimony largely turned on semantics and arguments about the characterization of the arrangement rather an honest recognition that employees and others received compensation in arrears.

[36] Ex. 1016; Trial Tr. 1395:17–1396:4.

> Isaac. That may very well be an impossible task . . . . The manager would need to be pretty adept in interpersonal relationships for that to work. He would likely face resistance from Isaac, but would need to remain persistent yet polite, praising Isaac and his contribution regularly. I don't mean that praise to be false. Isaac makes a huge contribution, he just needs someone to acknowledge it regularly. Finding someone to do all this is a tall order.[37]

Jordan and Watt also experienced the same frustration with Isaac at different times.[38]

E. Tahmisian acquired McAllister's and Watt's Netacent stock

Beginning in 2016 and continuing through 2019, loans from Tahmisian's mother, aunt, and an associated entity were essential to Netacent's survival. Ultimately, it appears these loans exceeded $3,000,000. Tahmisian was a co-obligor on the loans from his family. McAllister acknowledged that he knew Tahmisian's family "loaned a bunch of money to the company."[39] McAllister further testified, "without your family's support, Netacent would not have survived."[40]

Netacent's receipt of loans from Tahmisian's family created a unique challenge for Tahmisian. Although he was the company's president, the management dynamic was dysfunctional in large part because of Isaac's ability to undermine Netacent's success by threatening to leave as well as his need for constant praise. As a co-obligor, it was important to Tahmisian that Netacent repay his family, and absent greater control over Netacent's future, the risk of non-payment increased.[41] He correctly observed that Netacent's problems stemmed from issues with Isaac and "we have no ultimate decision maker."[42] To rectify this problem, he emailed Watt, McAllister, and Jordan.

On November 5, 2017, Tahmisian outlined a series of problems facing Netacent:[43]

[37] Ex. 1016; Trial Tr. 1396:19–1397:21.

[38] Trial Tr. 4465–4469.

[39] Trial Tr. 1464:21–1465:7.

[40] Trial Tr. 1473:2–4.

[41] Trial Tr. 1036:19–22.

[42] Ex. 2032.

[43] *Id.*

- . . . . everyone is frustrated with me for not keeping the Isaac situation under control. We have to walk on eggshells and do stupid things that waste our time and make us angry in order to deal with it.

- . . . . there is no accountability for actions or inactions.

- I think I have done some good things as President, but I think we all know that the company management has been a dumpster fire.

- Without a final decision maker, the simplest things become ridiculous four-hour discussions where whoever argues the longest and makes the discussion the most painful, wins. I think we are all tired of this; it makes our company unproductive and it makes us angry.

To resolve these issues, Tahmisian proposed that Watt, Jordan, and McAllister consider making him the ultimate decision maker, by "giving me your voting shares in exchange for non-voting shares so that I can have the majority of voting stock."[44]

He concluded, "I want each of you to go on record either supporting my leadership of the company in this way or not supporting it . . . . Please talk with each other and whomever else you think best and let me know which way you want to go by the end of the week."[45] For a closely held corporation where the same people are shareholders, directors, management, and employees, accountability and continuity in leadership are essential and Tahmisian recognized Netacent needed both to succeed.

McAllister responded, and strongly concurred, noting, "we have spent far too much time arguing – sometimes about inconsequential stuff – and too little time on the task at hand—doing a superb job for Alabama . . . . in my mind there's no doubt that we need to try a different approach."[46] Within a year of this email, McAllister and Watt accepted Tahmisian's proposal and sold their shares to him.

As 2017 ended, efforts by Netacent's two largest shareholders to increase their control through other shareholders had occurred twice. First, when Isaac threatened to leave Netacent if Jordan did not receive a 10% interest and second, when Tahmisian made his proposal. The contrasting approaches is stark. Tahmisian sent a thoughtful email to Jordan, Watt, and McAllister, outlining a series of problems, a proposed solution, and inviting them to "talk with each other and whomever else you think best." Conversely, Isaac demanded Jordan, his brother, receive a 10% interest, or he would quit.

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[44] *Id.*

[45] *Id.*

[46] *Id.*

1. Neither Netacent's articles of incorporation nor its bylaws prohibit the sale or transfer of shares from one existing shareholder to another

Netacent's articles of incorporation provide few limitations on the issuance or transfer of stock in the company. The single requirement is that any transfer of stock must be to another individual who is eligible to be a shareholder.[47] As such, a transfer from Watt or McAllister to Tahmisian is permitted. However, a combined reading of Articles 4.2, which describes stock transfers, and 4.4, which provides for voting rights associated with stock ownership, do not contemplate two types of stock—voting and non-voting. A transfer or sale of stock is a complete transfer of the right to vote that share and any economic benefits that flow from it.[48]

The procedure for issuing stock and disposing of stock certificates is outlined in the bylaws. Stock certificates are "transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed."[49] The bylaws indicate that before a new certificate is issued, the old certificate must be surrendered for cancellation.[50] Despite being required to make a "transfer on the books," and to surrender and issue new certificates, these procedures were rarely followed.

Isaac was the Stock Transfer Agent responsible for maintaining the stock ledger, but his attention to it was sporadic. For example, Watt received his 1,000 shares in November 2015, but Isaac failed to update the stock ledger for almost two years.[51] Jordan received his initial shares in March 2017, but Isaac never recorded the transfer in the stock ledger and did not issue the actual shares to Jordan.[52] McAllister received his shares in 2017, but did not receive the actual stock shares until January 2022, more than 5 years later.[53]

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[47] Ex. 2304-4 at ¶ 4.2.

[48] Any related agreement in which the seller has a right to demand from the buyer dividends or other economic benefits coexists between the buyer and seller, independent of the corporation.

[49] Ex. 2278-29; see also Ex. 2004-3 at ¶ 3.2 ("[t]ransfers of stock shall be made only upon the stock transfer books of the corporation"); Ex. 2307-18.

[50] Ex. 2004-3 at ¶ 3.2.

[51] Doc. 253-1 at ¶ 42.

[52] *Id.* at ¶ 43.

[53] *Id.* at ¶ 44.

a. Watt Stock Acquisition

On January 15, 2018, Tahmisian emailed Watt asking if he could acquire some or all of Watt's shares.[54] It is unclear how Watt responded to this inquiry, but Tahmisian followed up again on January 17, 2018.[55] A month later Watt and Tahmisian executed a Stock Sale and Purchase Agreement ("Watt PSA").[56] According to the Watt PSA, Watt agreed to "irrevocably transfer and convey the shares to the buyer" in exchange for payments totaling $100,000.[57]

However, as Tahmisian was only interested in purchasing the voting rights associated with those 1,000 shares, the Watt PSA reconveyed to Watt all financial benefits that inure to the seller, including, without limitation, dividends and sale proceeds.[58] The Watt PSA included an integration clause. Tahmisian made all payments required under the Watt PSA to Watt.[59] The last payment was received in October 2020.

Netacent and Watt executed an Employment Agreement the same day.[60] Tahmisian signed the Employment Agreement as President of Netacent.[61] It provides for a term of employment from November 1, 2015, through October 31, 2025, at an annual salary of $150,000 "whether or not the Employee continues to work for [Netacent] during the [employment period]."[62] Importantly, Netacent's obligation to make these salary payments is qualified by other provisions. Netacent has no obligation to make the payments required under the agreement, unless Watt is terminated without cause.[63]

b. McAllister Stock Acquisition

Tahmisian acquired McAllister's 1,000 shares of Netacent stock in a series of transactions beginning in 2018. Tahmisian and McAllister entered into a Stock Purchase and

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[54] Ex. 2158-3.

[55] Ex. 2158-2–3; *see also* Ex. 1160-2–3 at ¶¶ 10-13.

[56] Exs. 2042; 2307-32.

[57] *Id.*

[58] *Id.*

[59] Doc. 253-1 at ¶ 54.

[60] Ex. 2307-39.

[61] Ex. 2307-40.

[62] Ex. 2042-4 at Article I ¶¶ 1-4; *see also* Exs. 1168-4 at ¶ 10; 2158; 2307-35.

[63] Exs. 2042 at Art. III ¶ 4; 2307-37.

Sale Agreement on June 8, 2018 ("McAllister PSA").[64] The McAllister PSA was similar to the Watt PSA. Tahmisian would acquire the shares and McAllister would have a future right to the economic benefits. The consideration for the purchase was $101,000. McAllister received $1,000 when the McAllister PSA was signed and the remaining $100,000 was paid on October 20, 2020.[65]

A few weeks later, Tahmisian proposed buying McAllister's shares outright, and in response, McAllister proposed a price of $500,000 over five years beginning in 2021.[66] Tahmisian and McAllister reached an agreement and signed a Bill of Sale for Stock ("Bill of Sale") on December 5, 2020.[67] According to its terms, Tahmisian would purchase McAllister's beneficial interest in the shares that were the subject of the McAllister PSA in exchange for a total of $601,000. On December 4, 2020, Tahmisian paid McAllister the remaining $500,000 and acquired McAllister's shares as well as the economic benefits associated with them.[68] By its terms, the Bill of Sale supersedes all prior agreements, including the McAllister Purchase and Sale Agreement.

Neither Tahmisian, Watt, nor McAllister disclosed their transaction to the other Board members or shareholders. In fact, Isaac did not learn about Tahmisian's stock purchases until the fall of 2021. Watt and McAllister feared how Isaac would react if he knew. McAllister warned Tahmisian that Isaac would not like it and he expected it to cause a blow up.[69] Watt knew that once Isaac learned of the transaction, there would be problems.[70] Perhaps most telling, Jordan did not reveal to his brother that Tahmisian had emailed three of the four other directors seeking to increase his control and establish accountability and continuity in leadership for Netacent.

McAllister's and Watt's decision to sell their shares to Tahmisian and the efforts to keep these transactions secret until October 2021, establishes two important points. First, McAllister and Watt recognized Tahmisian was the best leadership choice for Natacent. Second, the parties feared Isaac's reaction. Their fear implicitly recognized Isaac's willingness to leverage his expertise to Netacent's detriment.

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64 Exs. 2307-42; 1040.

65 Ex. 2321-40; Doc. 253-1 at ¶ 63.

66 Ex. 1087; Doc. 253-1 at ¶ 69.

67 Ex. 2132; Doc. 253-1 at ¶ 70.

68 Ex. 2321-50; Doc. 253-1 at ¶ 262.

69 Trial Tr. 1491:20–25; 1492:1–5; Ex. 1038; Doc. 253-1 at ¶ 66.

70 Trial Tr. 2193:2–11.

F. The ADOL RFP Contract

For almost the entirety of the duration of the initial ADOL RFP, Tahmisian was Netacent's president and enjoyed the support of at least two directors, Watt and McAllister, as evidenced by their sale of their Netacent stock to him. In late 2017, Netacent was awarded the RFP and the term of the initial contract defined the period of performance as November 1, 2017 to October 31, 2018.

Under the ADOL RFP contract, ADOL agreed to pay Netacent $2,095,160.64 to modernize its unemployment system using Netacent's Data Station.[71] The undertaking was significant: Netacent's task was "updating a 40 year old mainframe system nearing the end of its cycle, integrating current UI systems, [and] integrating up to date Federal, State and local mandated UI requirements."[72] To ensure Netacent was successful, Tahmisian and Watt moved to Alabama shortly after the contract was executed.

The period of performance was amended twice. As a result of the amendments, the period of performance ended on October 31, 2020. Netacent delivered the services consistent with the RFP, and ADOL's implementation of Data Station went live on January 6, 2020. Netacent received payments on October 23, 2019, December 26, 2019, and March 11, 2020, totaling $2,088,149.68. These funds were deposited into Netacent's bank account.[73] Following receipt of the March 11, 2020, payment, the RFP was completed and Netacent was paid for its services.[74]

G. Tahmisian formed Solid State Operations, Inc. in late 2019 to pursue more expansive opportunities

SSO was formed to support Netacent and pursue software development opportunities that were not strictly tied to unemployment insurance. Frustrated that neither Isaac nor anyone else at Netacent prioritized or wanted to pursue a platform that could seamlessly integrate Netacent software with any other software developer's products for utilization in any configuration desired by the end user, Tahmisian formed SSO. In addition to the platform, Tahmisian recognized software development and maintenance were not the same and required different approaches.

Prior to SSO's formation, Tahmisian contacted certain Netacent employees[75] and asked "[w]hen is a good time for a 'Platform Team' exploratory meeting?... I'm ready to move forward

[71] Ex. 2024.

[72] *Id.*

[73] Exs. 1307; 1309; 2302.

[74] Data Station is a subscription model, requiring ADOL to enter into new contracts going forward.

[75] Ben McCarty ("McCarty"), Bert Newell ("Newell"), Sandy Fitzpatrick ("Fitzpatrick"), Joshua Fieldstad ("Fieldstad"), and Jeremy Armstrong ("Armstrong"), collectively the "Platform Team."

with it and I want to know who's in."[76] Following this meeting, Tahmisian began forming and discussing a potential spin-off company with the Platform Team.[77] On October 20, 2019, Tahmisian created a OneNote page called "SolidState" that contained a "bullet list of things to do."[78]

On November 3, 2019, Tahmisian sent a few Netacent employees, including the Platform Team, an email outlining his intentions to form a new company called Solid State Operations.[79] Tahmisian did not disclose his plans to the other shareholders or Board at this time.[80] SSO was incorporated in November 2019 in Delaware. Tahmisian was its Chief Executive Officer and sole shareholder.[81] The "platform" would ultimately become "Harbor-9."[82]

About three months later, on February 9, 2020, Tahmisian informed a wider audience of SSO's existence and how it would complement Netacent. He sent an email to Isaac, McAllister, and Watt[83] advising each of them of "a larger shift that I'm implementing which I'm hoping you'll all be as excited about as I am."[84] This shift corresponded to Netacent's transition from development and delivery of Data Station to ADOL to its maintenance. Tahmisian explained to Isaac, McAllister, and Watt:

> In order to keep Netacent focused on UI software and process improvement for Alabama (and other states we onboard) . . . . I've set up another company, called Solid State Operations Inc. dedicated to handling the operations and integration

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[76] Ex. 2068-2.

[77] Exs. 2070; 2073; 2076; 2078; 2242; Trial Tr. 367:15–368:3, 369:24–370:8, 5372:1–5374:10.

[78] Ex. 2224; Trial Tr. 3076:8–11.

[79] Exs. 2070; 2071.

[80] Trial Tr. 375:10–376:5, 5376:12–16; Ex. 2076-1 ("I'm told not everyone is aware…"); Trial Tr. 377:23–378:4, 799:14–25.

[81] Exs. 2078-1; 2076; 3000; Doc. 253-1 at ¶ 183; Doc. 253-2 at ¶ 258.

[82] Harbor 9 is conceptually different from the nascent platform discussions at Netacent because it is not limited to unemployment insurance. It has the potential for significantly broader applications than contemplated at Netacent. Trial Tr. 291:5–15; 1116:3–10; 1120:7–1122:5; 1653:10–20.

[83] Jordan was no longer employed at Netacent. He left to start an independent company, "Misfits." He continued to own 1,000 shares, or 10% of Netacent stock, and was still on the board, but was not involved in Netacent's affairs in any material way until he returned in October 2021.

[84] Doc. 253-1 at ¶ 184; Trial Tr. 1529:11–14; 4481:2–10; Exs. 1062-3; 4048 at ¶ 14.

> that Netacent is currently doing . . . . Solid State will support Netacent by providing services such as: stable hosting, security, availability, integration . . . , project and contract management, and support. This will free Netacent to focus on Data Station processing and enhancements, new UI applications like RIC and eGov replacements, and implementing UI process improvement for Alabama and other states we onboard.[85]

Tahmisian anticipated the two corporations can "each succeed in their own, different ways."[86] Finally, he explained that "SSO funding will not come at the expense of Netacent.[87] It will initially be funded out of money beyond the 8% that I negotiate with ADOL."[88]

McAllister responded to the email and affirmatively endorsed Tahmisian's plan, stating:

> I really like your approach! I've been concerned for a long time about the transition from development to maintenance. They're two completely different worlds, and it hasn't always been obvious that Netacent was prepared for that. In fact, it has been obvious to me at times that Netacent was not prepared for it. SSO is a great strategy for fixing that. SSO is a really good move.[89]

McAllister's response recognized a distinction between development and maintenance and further recognized Netacent was not prepared to make the transition from one to the other. He considered SSO a "great strategy" for addressing it. Tahmisian's email also highlighted that the new division of work between SSO and Netacent would have other benefits, including giving Isaac greater autonomy over the pace at which Netacent grew.[90] The record shows McAllister explicitly supported the SSO proposal, but neither Isaac nor Watt responded in any substantive way.

Over the next 18 months, SSO was actively managed by Tahmisian, while at the same time he served as Netacent's President, largest shareholder, and director. SSO's existence was obvious and visible, as Tahmisian conducted meetings that included managers from SSO and Netacent. Each organization was aware of the other, and neither Isaac, Watt, McAllister, nor

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[85] Exs. 1062; 3000.

[86] *Id.*

[87] *Id.*

[88] *Id.*

[89] *Id.*

[90] *Id.* This was a source of conflict between Tahmisian and Isaac. While Tahmisian favored promotion and growth, Isaac seemingly was content to do one project at a time, taking on each new project after the prior project was complete.

Jordan directly challenged either Tahmisian's vision for the dual companies or the division of work between them.[91] Isaac was content to acquiesce to SSO's presence and participation.[92]

H. After Data Station went "live," Netacent and SSO coexisted and had the potential to be successful working together, but shareholder disputes resulted in lost opportunities

1. Netacent's financial outlook was questionable in early 2020 because it had delivered Data Station to ADOL, received payment pursuant to the ADOL RFP, but had not entered new agreements or been awarded a contract with a new state

Consistent with his April 2020 email, Tahmisian used SSO to transition from development to maintenance. On April 16, 2020, Tahmisian exchanged emails with ADOL, Netacent's directors, and Teams messages with Isaac. These communications would prove to be the source of this litigation, in part. The first email to ADOL explains that SSO "needs to have the emergency $2M in its bank account by Monday" in order to pay employees and expenses.[93] It refers to Supplemental Budget Requests ("SBR"). While not clear, SBRs appear to be the source of funding for the emergency $2,000,000. The email further refers to the "service that Netacent/SolidState have provided."

Along with the email, Tahmisian caused invoices 1001, 1002, and 1003[94] to be issued to ADOL from SSO on the same date. Each invoice described the work done and was due on

[91] Although Isaac testified that shortly after the email was sent, he and Tahmisian had a call in which he expressed concerns about SSO, the Court gives it little weight. Such testimony is inconsistent with both the record and Isaac's subsequent actions in the eighteen months that followed. Isaac testified that he told Tahmisian, "we don't need any of this at Netacent." First, that conclusion is difficult to reconcile with McAllister's response and analysis, which at a minimum reflects a more objective exercise of business judgment. Second, Tahmisian testified that, for a period of roughly two years, Isaac never specifically objected to the existence of SSO and never asked him to shut it down but only cautioned him about SSO's taking credit for Netacent products. Trial Tr. 891:1–16. Third, in the months that followed Isaac did nothing, not a single act that is consistent with his alleged beliefs that SSO was not needed. Instead, Netacent employees became SSO employees, SSO provided services to Netacent and Isaac did nothing. As a result, the Court gives his testimony little weight.

[92] The delivery of Data Station to Alabama did not mean Isaac's work or that of the other programmers was finished. There were additional components to create, program, and add to Data Station, as well as many bugs that had to be found and fixed. Life remained very busy for the programmers for many months.

[93] Ex. 2104.

[94] Exs. 2102, 2101, and 2100 respectively.

receipt in the amount of $2,000,000 each, for a total of $6,000,000. The work described included references to PUA, FPUC, moving systems to the cloud, and UC Claims Tracker. Margie Toney, Chief Financial Officer for ADOL, responded and explained it could not issue a check without some additional programming from Netacent that would allow it to pay Netacent from one account rather than another.[95]

Tahmisian forwarded Toney's response to Isaac, who explained he could make the requested changes after questioning, "is this ethical." Isaac made the changes, and a check from ADOL was issued, but the precise discussion Netacent had internally is not in the record. Instead, the exhibit admitted includes the following from Isaac, "Be careful not to send this particular chain to AL. Greg's forward in the middle of the chain cleared up some of our chitchat."[96]

An hour after Isaac's email regarding "chitchat" and Tahmisian's confirmation that the amount to be paid was $2,000,000, Isaac and Tahmisian exchanged a series of messages in which Tahmisian responded to Isaac's questions, explained the status of the $2,000,000 payment, and discussed other details related to new contracts with ADOL. In the excerpted Teams message, neither Tahmisian nor Isaac explicitly refer to Netacent or SSO. Instead, Tahmisian and Isaac refer to "we."

In these messages, Tahmisian explained that under the new agreement, ADOL would pay the emergency $2,000,000 plus an additional $6,000,000 in SBR funds for a total of $8,000,000 in SBR funding. This $8,000,000 would be in addition to the 8% above base payment for 2020.[97] Although Netacent initially anticipated being paid 15% of above base, the 8% plus $8,000,000 was acceptable to Isaac, and no one objected. Both Isaac and Tahmisian use "we" to describe the recipient of the payments, but neither explicitly refers to either Netacent or SSO.

In addition to sending invoices to ADOL from SSO as early as April 2020, Tahmisian also sent ADOL a letter in August 2020 that explained SSO was the only vendor licensed to sell and support Netacent products. It further certified that "Data Station service for ADOL must be purchased from SSO." Neither this letter nor the invoices from SSO to ADOL were formally approved by Netacent's Board or shareholders.

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[95] Ex. 2103-4. The email subject line was "Need programming for issuance of check to Netacent."

[96] Ex. 2103-1.

[97] The U.S. Department of Labor allocates funds to state workforce agencies for unemployment benefits. The state receives a "base" grant, which is the workload level the federal government assumes the state will have, and then if the workload goes above what is included in the base, then the state receives extra funds, which are called "above base." Trial Tr. 1832:16–1833:6. When something happens that causes the workload to go beyond both the base and above base funding, then the state submits a supplemental budget request. 1586:14–19. This occurred during Covid.

Despite the absence of formal approval, both the invoices and the letter are consistent with the email Tahmisian sent in February 2020 explaining the transition from development to maintenance, which strategy was endorsed by McAllister and ignored by Watt and Isaac.

By the end of 2020, Tahmisian had solved Netacent's cash flow problems. Through a combination of aggressive promoting and funding provided as a result of the Covid pandemic, Tahmisian had secured an additional $8,000,000 in SBR funding. In an email between Tahmisian and Watt, Tahmisian explained that Netacent's revenue in normal years [to date] was about $2,000,000, but its expenses were $3,500,000, resulting in $1,500,000 loss each year.[98] Additional funding from the pandemic would cover Netacent's losses.[99]

During this same email exchange, Watt recognized that Netacent's success was attributable to Tahmisian's leadership and hard work.[100] He further acknowledged the risk Tahmisian took, stating, "he's taking a huge risk, much more than me or anyone else so I can see why he wants control . . . . I have since supported you and your approach many times and will continue to do so . . . . but I will never be able to match your sacrifice and your family's sacrifice."[101] These statements reflect Watt's assessment of Tahmisian in December 2020.

2. SSO's pursuit of non-Netacent business opportunities and support of Netacent

When SSO was formed, Tahmisian managed its financial affairs,[102] and soon SSO played an increasing role in Netacent's relationship with ADOL. It issued invoices on behalf of Netacent and later issued a sole source letter to facilitate ongoing invoices and payments. Its real success in 2020 and 2021 was a totally separate venture—a call center. In June 2020, ADOL awarded a contract for a call center to a wholly unrelated company: NTT. NTT subsequently hired SSO as a subcontractor. The term for this contract ended on December 31, 2020.

When the contract ended, Tahmisian anticipated the necessary congressional authorization for outside claim adjudication would be renewed, and he hired previous call center employees. He was correct. SSO and ADOL entered into a contract on December 31, 2020, which was to begin the following day and extend through March 14, 2021.[103] The contract was

[98] Ex. 1096.

[99] *Id*.

[100] *Id*.

[101] *Id*.

[102] Trial Tr. 3818:7–10; 4150:14–4151:10, 4329:11–13.

[103] Ex. 3006.

extended on March 1, 2021, and again on March 12, 2021, and finally on September 1, 2021.[104] The contract formally ended on December 31, 2021.[105] The call center produced significant gross revenue for SSO, and after payment of substantial expenses, the call center proved to be profitable and ultimately benefitted Netacent. McAllister observed that SSO had turned into a cash cow and likely subsidized Netacent's cash flow.[106]

Tahmisian made a conscious choice to pursue the call center work through SSO rather than Netacent.[107] The call center work was outside Netacent's line of business and it was temporary. More importantly, Netacent employees were busy with existing Data Station related tasks. The CARES Act expanded the definition of persons who would qualify for unemployment insurance benefits, resulting in an influx of claims and necessary software development changes. Nothing in the record indicates Netacent or Isaac expressed any objection to SSO's operation of the call center in real time.[108]

By Tahmisian's own admission, he ran things loosely and did not strictly segregate Netacent's and SSO's accounts. Though there were separate bank accounts, and he generally tried to pay Netacent's bills out of its account, he regularly moved funds between the two entities.[109] For example, Tahmisian used SSO funds to pay Netacent expenses and vice versa.[110] He put several Netacent employees on SSO's health insurance plan.[111]

He moved funds between SSO and Netacent in order to make payroll for one entity or the other on several occasions. For example, on May 4, 2020, Tahmisian transferred $1,000,000 from SSO's account into Netacent's account so Netacent could make payroll.[112] In another instance, he used SSO money to pay off a Netacent loan and later transferred money from

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[104] Ex. 3003.

[105] *Id.*

[106] Ex. 1161.

[107] Trial Tr. 4123:24–4124:3.

[108] The call center only became an issue for Netacent and Isaac after Isaac learned of Tahmisian's transactions with McAllister and Watt.

[109] Ex. 1155-3–4 at ¶¶ 12–14; Ex. 1158-1–2; *see, e.g.*, Exs. 2302-23, 41; 2321-17, 29; Trial Tr. 831:25–832:17.

[110] Trial Tr. 831:18–24; 833:20–834:4; 3865:13–3866:23.

[111] Doc. 253-2 at ¶ 108.

[112] Exs. 2302-23; 2108-2–4. Trial Tr. 3860:7–3861:4.

Netacent to SSO in an equal amount to reimburse SSO for the loan payment.[113] In short, the books of both companies present a financial picture that is opaque at best. Funds flowed from SSO to Netacent and back as needed, making it almost impossible to accurately determine with the record presented to this Court who was the net winner and loser under this management paradigm.

3. Netacent and SSO 2021

a. Hawaii

On March 30, 2021, SSO entered into an agreement to provide call center services to Hawaii. This was a short-term contract, and the work was performed exclusively by SSO employees. Nothing in the record suggests Netacent or any of its directors ever questioned or otherwise challenged SSO's decision to provide call center services to Hawaii.

The more lucrative contract with Hawaii was for Data Station. Tahmisian actively sought this work, but he did it through SSO rather than Netacent. On January 25, 2021, SSO was awarded a Statement of Work contract with Hawaii for Data Station, with Netacent listed as a subcontractor while SSO was the prime contractor.

Pursuant to the contract, Hawaii was to pay 10% of its base and above base budget once "Data Station is deployed in Hawaii." There was no agreement between SSO and Netacent outlining how the companies would work together or share the payments received for the work completed.[114] Both entities worked on the project.

Over time, Hawaii was increasingly dissatisfied with SSO's performance under the contract and commissioned an independent verification and validation ("IV&V") report. The IV&V report found that a lack of coordination between SSO and Netacent consistently contributed to delays across project activities.[115] The report concluded that to ensure a successful implementation, "SSO and Netacent should work in tandem . . . ."[116] At this point in 2021,

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[113] Trial Tr. 832:2–7.

[114] Trial Tr. 820:17–21.

[115] "A lack of coordination between the system integrator, Solid State Operations (SSO), and their software vendor, Netacent, has consistently contributed to delays across project activities . . . . While SSO is responsible for project management and coordination activities, Netacent is involved in the development and testing activities of the project to ensure a successful implementation." Ex. 1224 at p. 3. As such, contrary to Netacent's efforts to blame SSO, the report clearly shows Netacent was equally responsible for the problems in Hawaii.

[116] Ex. 1224 at p. 3.

however, the parties' working relationship had deteriorated, making success improbable. Hawaii terminated the contract with SSO on April 22, 2022.[117]

In 2024, Hawaii entered into a new agreement with Netacent to implement Data Station.

b. Kentucky

Kentucky also sought to modernize its UI system and issued an RFP in 2021. SSO submitted a bid for $58,000,000 to implement Data Station. Again, no agreement between Netacent and SSO was in place for that work, and again, Netacent was listed as the subcontractor while SSO was the prime contractor. During trial, Tahmisian testified that Netacent would have been entitled to half of the award—$29,000,000. A demonstration of Data Station was scheduled for early February 2022, but the parties' pending litigation at that time proved fatal to their joint success. Rather than set aside their differences, Isaac and Tahmisian caused Netacent and SSO to lose this opportunity. Ultimately, SSO withdrew its bid.

c. Arizona

In the fall of 2021, Arizona issued an RFP to modernize its unemployment insurance benefits system. SSO submitted a proposal in which it was named as the prime contractor and Netacent was listed as a subcontractor. This time, Netacent and SSO entered into a Teaming Agreement on April 14, 2022.[118] This agreement addressed a particular sticking point with Netacent and required that, after Arizona issued the notice of intent to award the contract, SSO would change the agreement to list Netacent as the prime contractor and SSO would be the subcontractor.

Arizona required SSO to make a presentation as part of its RFP process. The presentation did not go well. SSO blamed Netacent. Netacent blamed SSO. Tahmisian and Isaac blamed each other. Ultimately, Arizona did not award the contract to SSO. The record supports a finding that, again, Tahmisian and Isaac's strong personalities caused Netacent and SSO to lose another opportunity.

4. ADOL payments to SSO

Ultimately, because the Board neither managed the affairs of the corporation nor exercised any control over the president, and because he was not proactively transparent about it, Tahmisian was the only party familiar with the different agreements between SSO, ADOL, and Netacent. Although he had begun to formalize the relationship between Netacent and SSO as early as March 2021, including drafting contracts between the companies,[119] that process was

[117] Ex. 1218.

[118] Ex. 3026.

[119] Ex. 2140-2.

never completed. Failure to formalize the arrangement between Netacent and SSO combined with Tahmisian's use of SSO and Netacent bank accounts interchangeably depending on which company's needs were most pressing, blurred the lines between the entities and their operations.

At trial, Netacent introduced a table prepared by Tahmisian that reconciled by date, customer, deliverable, and associated statement of work the amounts received by SSO and Netacent.[120] According to the table, SSO received total payments from ADOL and NTT in the amount of $30,885,226. Based on "deliverable" and statement of work descriptions, SSO received $8,884,056 for call center related work. Similarly, using those descriptions, SSO received an additional $11,876,036 for other work it performed for ADOL. Netacent received $10,095,134.

The evidence also showed that in addition to the $10,095,134 Netacent received from SSO, it received an additional $2,843,891 during the time period in question, for a total amount of $12,939,025. The aggregate amount of $12,939,025 was approximately 15% of ADOL's federal grant funding, the amount it had initially expected before Tahmisian and ADOL agreed to an 8% base and SBR funding as an alternative.[121] Importantly, this observation does not try to reconcile intercompany transfers, such as SSO paying a Netacent expense or vice versa. The record lacks the precision and detail required for that analysis.

The evidence introduced at trial did not clearly establish that payments made to SSO by ADOL or any other state agency should have been made to Netacent or that Netacent received less than it was entitled to under any agreement. Money moved from place to place as needed, and it is almost impossible for Isaac, Watt, Jordan, or Netacent to know with any certainty how to reconstruct the financial picture because Tahmisian was exclusively responsible for the negotiation of the contracts and allocation of payments for work done by the entities under a single contract.

At best, having failed to actively participate as Board members or otherwise supervise the President, the testimony of Isaac, Watt, and Jordan regarding funds SSO received from ADOL, Hawaii, and otherwise, reflected a combination of speculation and conjecture.[122] However, Tahmisian is not blameless. He failed to segregate funds and document the precise agreements he contemplated between Netacent and SSO. As early as February 2021, Tahmisian recognized

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[120] Ex. 2198-87–90.

[121] Trial Tr. 2829:25–2832:23; 3363:1–3366:20; 3416:23–3422:18; 4184:20–4188:24; 4189:9–4195:5; 4213:5–4217:11; 4279:2–4280:16; Exs. 1307, 1309. 2303.

[122] Isaac's testimony on Day 10 was instructive. It became clear to the Court that Tahmisian and Isaac communicate and process information in very different ways, resulting in ongoing miscommunication between the largest shareholders. Lacking clear communication, when faced with incomplete information, Isaac filled in the gaps with speculation that was not always correct.

contracts between SSO and Netacent were important for "financial auditing" purposes.[123] Despite this recognition, however, those contracts were not completed.

I. As 2021 progressed, Tahmisian, Isaac, and Watt discussed buying each other out

When it was clear that Tahmisian, Isaac, Netacent, and SSO could not reconcile their differences, buyouts were discussed. Isaac, his family, and Watt comprised one group of shareholders and Tahmisian the other. The stumbling block was disagreements over valuation. Tahmisian estimated Netacent's valuation was closer to $10,000,000 for buyout purposes, while Isaac's camp estimated the value was closer to $50,000,000. From June through October 2021, Isaac, Watt, and Tahmisian discussed different buyout options.

On September 22, 2021, the three met to discuss buyout alternatives. Isaac secretly recorded the meeting, illustrating how the relationship had deteriorated. At the meeting, Tahmisian recognized there was some perception that the relationship between the two companies was "not synergistic, but it's parasitic, you know? That one is happening at the expense of the other," and that there was "some conflict of interest here, as you know, with the two companies."[124] He acknowledged that his management of both SSO and Netacent may be the source of liability for him.[125] A buyout by one side or the other had the potential to solve the problem.[126]

Over the next month, Isaac worked with his family and Watt and made Tahmisian an offer, which he rejected on October 23, 2021.[127] Following this rejection, on October 25, 2021, Watt advised Isaac for the first time that he had executed two agreements with Tahmisian in February 2018: a stock sale agreement and employment agreement.

Isaac, along with his family members and Watt, took immediate action following Watt's disclosure of his stock sale. Tahmisian was removed as president, marginalized as a stockholder, SSO was interfered with and undermined, and litigation was commenced almost immediately. While some reaction may have been warranted, the decisions made by Isaac and the other Board members were extreme, especially given their lack of complete information.

J. In 48 hours, Isaac and the Board made a series of rash decisions that were neither informed, in good faith, nor in the best interests of Netacent and its shareholders

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[123] Ex. 2140.

[124] Ex. 2221-13–14 ([00:18:28]-[00:22:27]).

[125] Ex. 2221-13–14 ([00:18:28]-[00:22:27]).

[126] Ex. 2221-13–14 ([00:18:28]-[00:22:27]).

[127] Ex. 2155-3.

Within 48 hours of Watt's disclosure that he had sold his Netacent stock to Tahmisian, Isaac undertook an independent review of Netacent's bank accounts and concluded Tahmisian was a thief.[128] The next day, October 28, 2021, the Board met, but Tahmisian and McAllister were excluded.[129] No notice of the meeting was provided. At this meeting, held a mere 72 hours after Watt's disclosure to Isaac of his stock sale, Isaac requested a vote to nullify and void Watt's employment agreement and the Watt PSA on the grounds they presented a clear conflict of interest. Although a party to the subject agreements, Watt voted.[130]

Next, the minutes refer to "the findings from the financial and contract audit." The "internal audit finding" served as the basis for retaining legal counsel and "pursuing legal action." Jordan conceded that as of October 28, 2021, there was no audit and no formal report. Instead, he explained that Isaac presented to Watt and Jordan conclusions that he had independently reached after looking at a limited set of documents that included certain bank statements, the Watt agreements, and emails.[131] According to Jordan, this initial inquiry was focused on two items: money and the Watt stock transaction.

Jordan testified the conclusions that were reached by Isaac and the others were based on the belief that, "at a minimum, our -- our above-base and below-base money should have come in. The 8 million should have come in and -- and I believe and there was another 15 million of SBR money." At a minimum, this testimony demonstrates Jordan, and possibly Isaac and Watt, did not understand the payment terms of the ADOL agreements and statements of work. Certainly, all had been disengaged Board members and stockholders for many years, and Tahmisian did little to inform them. Nothing in the record shows there was ever a scenario under which Netacent would receive its above base, below base, $8,000,000, and another $15,000,000.

Finally, although not included in the minutes, Jordan testified that a further agreement was reached with Watt at this meeting. The Barrett family agreed to deposit $100,000 into escrow for Watt's benefit, which testimony was confirmed by Isaac.[132] He clarified that Watt would have to repay the money. Although characterized as an "escrow," the timing and other circumstances surrounding Isaac and his father's decision to make $100,000 available to Watt is curious. At best, it was an escrow for an undefined purpose. At worst, it was an economic incentive offered to Watt to refute the validity of the stock transaction with Tahmisian.

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[128] Ex. 1168 at ¶¶ 9, 13.

[129] *Id.* at ¶ 18; Ex. 2304-30.

[130] Neither Watt nor Isaac explained their rationale for permitting Watt to vote to nullify the transaction even though he apparently no longer held voting rights and he was a party to the contract being nullified. *See* Idaho Code § 30-29-143(a)(2). Absent Watt's vote, however, no quorum existed because three directors were necessary for a quorum.

[131] Trial Tr. 4506:18–24.

[132] Trial Tr. 4512:22–25; 4521:15–4522:17. Craig Barrett, Isaac's father confirmed that he provided the funds in escrow. Trial Tr. 5662:24–5663:7.

K. The Shareholders and Board took more immediate and successive actions between November 1, 2021, and January 2022, than in the prior four years combined

Between November 1, 2021, and continuing through January 2022, Netacent's shareholders and directors held more shareholder and Board meetings than had been held in the prior four years. These meetings demonstrate that when Isaac, Watt, and Jordan decided Board and shareholder meetings were important, they had the ability to notice and hold such meetings. Their action during this period undermines their testimony that Tahmisian was solely to blame for the Board's failure to meet from 2017 to 2021.

Isaac's conclusion Tahmisian had "stolen" from Netacent finds no support in the record. Tahmisian's SSO activities were known by Netacent's directors, by SSO and Netacent employees, and in some cases, there was an explicit acknowledgment that SSO subsidized Netacent. McAllister, Watt, and Isaac were informed of SSO's existence and Tahmisian's plans for both entities. While Dominique Barrett encouraged Isaac to do something sooner, he did not do so.[133] It was only when Isaac realized Tahmisian may have acquired 52% of Netacent that he objected to SSO, its activities, its work, and its receipt of payments from ADOL.

The other shareholders, many of whom were Isaac's family members, followed his lead. Jordan and Watt consistently voted in favor of any action that was adverse to Tahmisian or SSO's interests, without regard to the impact it might have on Netacent. The record shows many of the actions the shareholders and Board took were uninformed at best and, at their worst, in bad faith.

1. Tahmisian is threatened with litigation by letter dated November 5, 2021[134]

Approximately 10 days after Isaac learned Tahmisian had acquired Watt's shares in Netacent, Tahmisian received a letter with the subject line, "Breach of Fiduciary Duty, Embezzlement, Theft, Misappropriation of Intellectual Property, and other Executive Misconduct," from Netacent's counsel Reuben Ortega. The letter comprises four pages of allegations and conclusions that closely mirror Netacent, Watt, Jordan, and Isaac's allegations and legal theories in the immediate litigation.[135]

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[133] Trial Tr. 5450:23–5451:9; 5542:10–24.

[134] Ex. 2164.

[135] The letter includes a reference to Fed. R. Evid. 408. Ordinarily, offers to compromise are not admissible to prove or disprove the validity or amount of a disputed claim, or to impeach by a prior inconsistent statement or a contradiction. However, courts have recognized settlement communications are admissible for "other purposes." Other purposes include a party's "bad faith." See, e.g., *Athey v. Farmers Ins. Exch.*, 234 F.3d 357 (8th Cir. 2000) (evidence of settlement offer by insurer was properly admitted to prove insurer's bad faith). Similarly, evidence of testimony regarding statements made during settlement negotiations was not offered to prove or disprove validity of amount of disputed claim, but rather to show ulterior motive

These allegations and legal conclusions are followed by threats that include:

- File suit against Tahmisian and SSO, remove Tahmisian as president, and invalidate stock transactions with Watt and McAllister;
- Request that the Court merge Netacent and SSO;
- Sell the combined entity after the merger;
- Submit to authorities for charges relating to wire fraud, banking fraud, conclusive evidence of your embezzlement "(much of which we already have);" and
- Seek a judgment against Tahmisian and request forfeiture of his personal assets.

Despite apparently having evidence of criminal conduct, the record in this case is devoid of any referrals to appropriate authorities or other conclusive evidence.[136]

The letter reflects a transparent attempt by Isaac to reseize control of Netacent. It demands Tahmisian agree to void all stock transactions with Watt and McAllister,[137] a merger between Netacent and SSO, and Tahmisian must step down as president and report directly to Isaac.[138] While Tahmisian would be permitted to retain his equity interests, he must assign all voting rights to Isaac.[139] Finally, if the merged companies pursue a sale, "we would allow you to potentially negotiate a new role post transaction."

The letter closes with a request for a response in 24 hours or "we will be forced to proceed with suit and press charges against you for theft, fraud, embezzlement, as well as other criminal charges and civil causes of action, which may include jail time." Contrary to the letter's indication that Tahmisian had 24 hours to respond, Netacent filed a complaint and an ex parte

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underlying lawsuit. *Penn, LLC v. Prosper Bus. Dev. Corp.*, 991 F. Supp. 2d 981, 2014 U.S. Dist. LEXIS 2039 (S.D. Ohio 2014), aff'd in part and rev'd in part, remanded, 600 Fed. Appx. 393, 2015 FED App. 0073N, 2015 U.S. App. LEXIS 1342 (6th Cir. 2015). This letter and a subsequent letter from Mr. Watkins to SSO suggest Netacent threatened litigation and filed suit against Tahmisian and SSO for ulterior purposes—specifically, to afford Isaac greater leverage in his shareholder dispute with Tahmisian.

[136] The bank records enclosed with the letter included six pages that do little to establish theft, wire fraud, banking fraud, or embezzlement. Further, if those six pages serve as the basis for Isaac's various conclusions, it only highlights how uninformed the Board members were regarding Netacent's business affairs.

[137] This demand seemingly benefits Isaac more than Netacent.

[138] Similarly, this benefits Isaac, but the benefits to Netacent of this demand are unclear.

[139] Throughout this litigation Netacent has argued ownership of its stock and voting rights cannot be divorced one from the other, but this is precisely what Netacent proposed to Tahmisian. This is an example where Netacent wants one set of rules for Isaac and another for Tahmisian.

motion for a Temporary Restraining Order and Preliminary Injunction on the same date of the letter, November 5, 2021.[140]

2. The Complaint is filed November 5, 2021, the same day the letter requesting a response in 24 hours is transmitted

Along with various Board and shareholder activity, Netacent commenced litigation on the same day it served its demand letter on Tahmisian. The initial complaint included claims by Netacent against Tahmisian and SSO for: (1) misrepresentation; (2) fraudulent concealment; (3) conversion; (4) unjust enrichment; (5) violation of Idaho Code § 30-29-830; (6) violation of Idaho Code § 30-29-842; (7) violation of Idaho Code § 30-29-870; and (8) accounting.[141] The complaint contains a series of allegations, including that in December of 2020, Netacent was to receive approximately $19,000,000 from a Supplemental Budget Request.[142]

Later, Isaac signed a declaration characterizing Tahmisian's actions as the diversion of up to $100,000,000 from Netacent to SSO.[143] The November 5, 2021, complaint includes allegations that mirror Ortega's letter also dated November 5, 2021. Following the filing of the complaint, the parties attended a series of hearings related to temporary restraining orders and preliminary injunctions.

3. Corporate Action and Stock Transfer Book, October 2021 – January 2022

Beginning on October 26, 2021, and continuing through January 2022, Isaac, Watt, and Jordan, acting through the Board, took a series of actions purportedly on behalf of Netacent. Additionally, at different times, this same group along with other shareholders purportedly took action as shareholders. The validity of these actions is dependent on the bylaws and Tahmisian's ownership interests in Netacent because the bylaws require a vote by the majority of shares entitled to vote.

On November 18, 2021, Isaac, Jordan, Watt, Dominique Barrett, McAllister, David Hopkins, Fieldstad (via proxy), and Tahmisian met as shareholders. Tahmisian was present only long enough to object to the meeting and to expressly dissent to "all actions to be taken at this meeting and entered in the minutes."[144] Fieldstad and McAllister remained at the meeting but

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[140] Following unsuccessful settlement negotiations, on January 21, 2022, Tahmisian filed a state court complaint against Netacent in which he sought unpaid wages. Both cases were removed to this Court and are now consolidated in this action. *See* 23-06019 and 23-06020.

[141] 23-6019 at Doc. 1 p. 216–228 of 473.

[142] *Id.* at p. 219 of 473 ¶ 19.

[143] *Id.* at p. 96 of 473 ¶ 15. When the complaint was amended in August 2022, those inflated claims of what Netacent was to receive were removed. Ex. 3062.

[144] Ex. 2305-10.

abstained from all votes. Isaac, Jordan, Watt, Dominique Barrett, and David Hopkins thereafter voted to confirm a new Board consisting of Isaac, Jordan, Watt, and McAllister.[145]

In essence, Tahmisian was being formally removed from the Board. To do so effectively, the bylaws required notice, a meeting of shareholders and a vote by the majority of shares entitled to vote for removal.[146] If Tahmisian's acquisition of the McAllister and Watt shares was valid and enforceable, a majority did not vote at the meeting. The November 18 vote was affirmed by the same shareholders on December 10.[147] Tahmisian did not vote at either meeting.

At the November 18, 2021, shareholder meeting, Netacent, its Board, and its Shareholders concluded maintenance of the stock transfer book was needed. Despite having failed to maintain the stock transfer book or other corporate formalities for at least four years, Isaac and Netacent now argue that the stock transfer book's failure to reflect the Tahmisian-Watt and Tahmisian-McAllister transactions was fatal to the validity of those transactions. Under this rationale, neither Netacent nor anyone else had to recognize these transactions. In essence the failure of formality was a substantive failure that rendered the transactions invalid.[148]

Prior to any action on November 18, 2021, the stock transfer book reflected the following ownership of shares:[149]

Share Ownership	
Gregg Tahmisian	3,100
Isaac Barrett	3,100
Jordan Barrett	1,000
Quinn Watt	1,000
John McAllister	1,000
Dominique Barrett	200
David Hopkins	200
Joshua Fieldstad	200
Daniel Hope	200

At the November 18 meeting, the shareholders confirmed that "Hope did not fulfil his obligations" and voted to return his shares "in equal proportion to [Isaac] and [Tahmisian] in

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[145] Ex. 2305-11–12.

[146] Articles, Ex. 2304-5 at ¶ 4.4; Bylaws, Ex. 2004-5 at ¶ 4.4.

[147] Ex. 2305-18.

[148] This is an example of Isaac's sudden insistence on compliance with formalities in a situation where doing so serves his interest despite years of ignoring this formal requirement.

[149] Ex. 2278; see also Exs. 1172-5; 1173-6; 1175-3; 1203; 2198-112, 123; 2304-25, 39, 42; 2305-13, 15, 21, 25; 4025-2.

accordance with the original agreement."[150] Hope's Stock Certificate was marked as "VOID" and "Vesting Never Occurred as of 1/6/2020," and the Transfer Book was updated accordingly.[151] As a result of Hope's surrendered certificate, new certificates were issued to Tahmisian and Isaac, using the official Stock Certificates and Seal.[152] The Transfer Book was also updated.[153] It now reflected the following holdings:

Share Ownership	
Gregg Tahmisian	3,200
Isaac Barrett	3,200
Jordan Barrett	1,000
Quinn Watt	1,000
John McAllister	1,000
Dominique Barrett	200
David Hopkins	200
Joshua Fieldstad	200

At a special meeting on November 19, the Board voted to remove Tahmisian as an authorized signatory and appoint Isaac as the sole signor on Netacent's bank accounts.[154] Later in November 2021, Isaac opened a new bank account for Netacent which was not accessible by Tahmisian and transferred the balance of Netacent's funds into that account.

After the November 18, 2021, meeting, McAllister emailed Isaac explaining that "Gregg asked me to officially ask you to transfer my stock to him. Assuming he used non-Netacent funds to buy my stock, that request is certainly legitimate."[155] As of that date, Tahmisian had only two Stock Certificates issued to him: Stock Certificate #4 for 3,100 shares and Stock Certificate #15 for 100 shares.[156] Watt remained in possession of his stock certificate.[157]

A few weeks later, at a December 10, 2021, special meeting, Netacent's Stock Transfer Ledger was read aloud and indicated that McAllister still owned 1,000 shares and Tahmisian

[150] Exs. 2304-36; 1172-5; 1201-1; Trial Tr. 3724:17–23.

[151] Ex. 2278-32.

[152] Ex. 2278-19, 21.

[153] Ex. 2278-3.

[154] Ex. 2304-40–41.

[155] Ex. 1171.

[156] Exs 2278-9, 21; 2301-12–13, 17, 28, 32; Ex. 2278-2–3, 9, 17.

[157] Trial Tr. 3848:3–3850:3.

held 3,200 shares.[158] The meeting minutes state that "Barrett, as acting President and Shareholder, disclosed to the Shareholders that the Stock Transfer Ledger has been closed, as of November 19, 2021, by the Board of Directors, pursuant to Section 6.5 of the Amended and Restated bylaws, for a period of 50 days."[159] Beginning in mid-November 2021, McAllister made efforts to have his stock transferred to Tahmisian.[160]

On January 5, 2022, McAllister was provided his stock certificate at a meeting with Isaac, Watt, Jordan, and Netacent's counsel.[161] After some discussion about how McAllister intended to transfer his shares to Tahmisian, Netacent's counsel recommended that McAallister inscribe "Netacent Inc. Gregg Tahmisian, CEO" on the transfer form assignment. He did so and delivered his stock certificate to Isaac, who immediately wrote "REACQUIRED AND DISPOSED 1/5/2022" on the back of the certificate.[162] In doing so, Netacent and Isaac actively frustrated McAllister's efforts to transfer his stock to Tahmisian.

McAllister repudiated that action and asked that the stock certificate be corrected to transfer the shares to Tahmisian.[163] This was never done. Finally, on January 10, 2022, at Tahmisian's request, McAllister granted an irrevocable proxy to Tahmisian, permitting him to vote the shares, which would expire when Tahmisian's ownership of the shares McAllister transferred to him were recorded as such by Netacent.[164] McAllister signed the proxy to Tahmisian because the "voting rights check" was from Tahmisian.[165] Ultimately, the Board voted to reacquire McAllister's 1,000 shares and "disposed" of them.[166] McAllister abstained from this vote.[167]

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[158] *Id.*; Ex. 2305-15.

[159] Ex. 2305-19.

[160] Ex. 1178.

[161] Ex. 1211. Regardless of whether the fact is disputed, the record is not clear when McAllister was initially given his 1,000 shares. He joined Netacent in 2015, and the share transfer ledger, discussed below, indicate his shares were issued on August 28, 2017.

[162] Ex. 1211.

[163] *Id.*

[164] Doc. No. 96-72.

[165] Ex. 2203.

[166] Ex. 2304-47. Significant questions exist whether this and other actions taken by the Board were valid. Resolution of these questions is dependent on whether Tahmisian acquired the McAllister and Watt shares of stock.

[167] Ex. 2304-47.

Isaac and Netacent's refusal to acknowledge the McAllister and Tahmisian transaction was justified by Isaac's rationale that any funds SSO received were "stolen." He argued that because McAllister's last payment of $500,000 was made by an SSO check, Tahmisian acquired the stock with Netacent's stolen funds, so the transaction was void, or at least Isaac and Netacent could ignore it or object to it. Tahmisian credibly testified that SSO independently did work for ADOL and received payments from ADOL. He further explained in his testimony why the check to McAllister was an SSO check, rather than a personal check. His testimony was credible.

Ultimately, Isaac and Netacent maintained their position through trial and McAllister was forced to retain counsel in order to defend the legitimacy of the transaction to which he and Tahmisian entered, at great expense to him. Nevertheless, McAllister's testimony at trial was consistent with past positions he had taken and demands he had made on Isaac and Netacent. Conversely, Watt's testimony at trial was difficult to reconcile with his prior recognition that Netacent needed continuity in management, his decision to sell his stock to Tahmisian, and his acceptance and retention of the payment from that transaction. Isaac and the Board's actions regarding the Tahmisian and McAllister transaction beginning in November 2021 and continuing through trial were not taken in good faith.

4. The "Audit"

Following Isaac's 48-hour investigation, issuance of the November 5, 2021, demand letter to Tahmisian, and the filing of the complaint, Netacent conducted an "audit." [168] The audit was completed by Jordan and dated January 5, 2022.[169] The audit relies on 31 exhibits and reached a series of conclusions that reinforced the November 5th complaint.

First, the audit concludes the sale of McAllister's stock to Tahmisian was made under false pretenses. This conclusion includes a series of other statements such as, "McAllister believed that Netacent purchased his stock." To reach this conclusion, one must disregard the Bill of Sale that identifies McAllister as seller and Tahmisian as buyer. Additionally, the conclusion relies on the assumption that because Tahmisian paid McAllister with a check from SSO, and those funds were allegedly stolen from Netacent, Netacent must have been the actual buyer.

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[168] Ex. 2198. Although described as an audit, McAllister explained that Isaac had informed him at a meeting at Gravis Law that they were "planning on hiring a CPA and doing a -- do a forensic audit on this whole situation" but McAllister later found out that "the audit report was done by Jordan and Isaac," and stated, "I signed [the Official Statement of the Board of Directors] assuming we were going to get to the truth and the truth through an audit, and we did not get that." Trial Tr. 1688:5–13. He further described the finding of the audit report as "irrelevant" because it was "done by two parties in this suit and not by an independent expert." Trial Tr. 1727:3–8.

[169] Jordan seems an unusual choice to author the October audit, as he had not been working at Netacent for nearly two years prior, nor was he an attorney or accountant, let alone a forensic accountant. Trial Tr. 4525:10–14; 4678:12–24.

The record shows this recasting of the transaction began with a series of emails between Isaac and McAllister, during which McAllister questioned his own transaction and adopted Isaac's analysis. Notably, McAllister's willingness to indulge this fiction was short lived and from November 23, 2021 on, McAllister consistently asserted the sale of his shares to Tahmisian was valid and asked for his lost stock certificate to be reissued.[170] By January 15, 2022, he was affirmatively demanding his shares be transferred to Tahmisian.

Next, the stock transaction was characterized as violative of the articles and bylaws because neither recognizes the separation of voting rights from ownership, despite the clear text of the purchase and sale agreement, and despite Netacent's counsel proposing precisely this arrangement to Tahmisian on November 5. Moreover, despite the historic failure to maintain the stock transfer book, Jordan concluded that because the Tahmisian-McAllister-Watt transfers were not noted in the stock transfer book, the transactions violated the bylaws.

The audit next concludes Tahmisian had a conflict of interest. Although not artful, the audit declares all revenue received by SSO should have been received by Netacent, and any profits shared by the shareholders of Netacent based on their ownership interests. Under this analysis, Tahmisian would have only received 32% of the amounts disbursed to Netacent shareholders, but by diverting revenue to SSO, he had the opportunity to deprive Netacent of the funds and receive 100% of any amounts disbursed to SSO shareholders.

Fourth, the audit concludes Tahmisian breached his fiduciary duty to Netacent in no less than four ways: utilization of the sole source letter resulting in SSO receiving payments earned by Netacent; representing that SSO was Netacent's parent in order for SSO to receive Netacent payments; SSO's receipt of large payments from ADOL and subsequent allocation of payments to SSO and Netacent at Tahmisian's sole discretion; and, actively trying to obtain ADOL software as a service contract for SSO.

Under the subheading, "History of Defrauding Netacent Shareholders," the audit highlights the Employment Agreement with Watt, characterizing it as, "corporate liability debt for Tahmisian's personal gain." Assuming this was true, Netacent voted to nullify the agreement and treat it as void in October 2021, eliminating both the liability and any damages associated with it. While doing so may have triggered a claim by Watt against Tahmisian if the Employment Agreement was integral to his stock sale, to date Watt has not filed an individual claim against Tahmisian making this allegation. Instead, he has testified on behalf of Netacent but has presented no independent claim (i.e., *Watt v. Tahmisian*) challenging the stock sale on any basis.

The next conclusion closely relates to the McAllister stock transaction. Again, Jordan explains how the SSO check received by McAllister must represent Netacent funds, thus making Netacent the acquiror of the stock. Finally, the audit concludes repayment of "deferred compensation" to Tahmisian or the loans from Tahmisian's family suffer from various problems,

[170] Ex. 1178.

despite Isaac, Watt, and McAllister's receipt of significant backpay as well as the repayment of the Barrett family loan.[171]

Scrutiny of the audit reveals it is, at best, an uninformed set of subjective findings that prioritizes the shareholder dispute between Isaac and Tahmisian over Netacent's interests. Objectively, Netacent's January 2022 analysis of ADOL revenue should have accounted for the call center revenue SSO earned. Isaac, Watt, and Jordan were aware that SSO was engaged in call center work and never objected to or asserted that Netacent should be operating the call center. Had they done so, Isaac's conclusion that SSO owed Netacent $7,000,000 in diverted revenue would have been impacted.

Second, the Tahmisian family's willingness to loan funds to Netacent while it completed the ADOL RFP was conditioned on Tahmisian having control, which at least in part influenced Watt and McAllister's decision to sell their shares to Tahmisian.[172] This choice to sell their shares to enable Netacent to receive desperately needed loans and any decision to later disavow those transactions implicates their own breaches of duties to Tahmisian.

Third, Tahmisian's email to Jordan, Watt, and McAllister on November 5, 2017 offering to buy their shares included a discussion of the need for continuity in leadership. Although Isaac was a gifted programmer, his willingness to withhold his talent to obtain outcomes others disagreed with was problematic. At least in part, Watt and McAllister's decision to sell their shares to Tahmisian represented a vote of confidence in Tahmisian, not Isaac. Further, the record shows that the decisions to sell were in Netacent's best interests at the time they were made and the transactions completed.

Fourth, not a single shareholder or director insisted on a Board meeting from 2017 to 2021, and all corporate formalities were abandoned by Tahmisian, Isaac, McAllister, Watt, and Jordan, each of whom was a director and collectively owned 94% of Netacent. Isaac, Jordan, and Watt's sudden insistence on corporate formality after ignoring it for many years was not in good faith. Instead, it was an effort to seize control of Netacent for Isaac, while trying to justify self-interested shareholder action as necessary for the company.

Last, Tahmisian, Watt, and McAllister kept the stock sales a secret because they feared Isaac's reaction. This fear proved justified. Isaac's reaction in the immediate 48 hours following disclosure of the Watt transaction and continuing throughout this litigation has neither been objective nor in good faith. While Tahmisian, Watt, and McAllister's transactions unquestionably should have been disclosed, their failure to do so does not render the transactions invalid.

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[171] This is another example where one set of rationales and actions are taken that benefit Isaac and his family, but a different rationale is employed for Tahmisian.

[172] Trial Tr. 1036:19–22.

5. Netacent represents to the state court it will act in a specific manner in February 2022, and later refuses to do so

Isaac's removal of Tahmisian and assumption of a new role resulted in Isaac unwinding systems Tahmisian had in place, including certain services provided to ADOL by SSO. Isaac and Netacent insisted that any services Tahmisian transitioned to SSO following his February 9, 2021, email be transitioned back to Netacent. By February 25, 2022, the parties were litigating everything, including the transition of services from SSO back to Netacent.

In the state court, Netacent filed a Motion for Temporary Restraining Order and sought a court order forcing SSO to continue providing services to ADOL while SSO transitioned access to the Microsoft Azure portal back to Netacent.[173] Immediately prior to the February 25, 2022, hearing on Netacent's Motion for Temporary Restraining Order, counsel for SSO and counsel for Netacent had a conversation regarding the concerns of both clients, i.e. that Netacent wanted access to the Microsoft Azure portal and SSO wanted to be paid.[174]

For SSO this concern was both immediate and prospective. ADOL already owed it $500,000 for past services.[175] Further, if it continued to perform services during any transition, it needed assurances it would be paid. At the hearing on February 25, 2022, SSO received the assurances that it needed. For example:

- Isaac testified SSO could get paid for past and future services to ADOL;[176]
- Isaac's counsel represented "If there are services that SSO has performed, SSO will be paid for those services;"[177]
- Isaac's counsel stated that ADOL was "just going to pay it throughout [sic] Netacent, and we turn around and pay to SSO;"[178]
- Isaac's counsel represented that "we'll be the conduit to pay them, just like we would any other subcontractor;"[179]

At the conclusion of the hearing, the parties stated on the record that SSO would immediately transfer access to Netacent, and Netacent stated it would pay SSO for the hosting services it

[173] Doc. 68-1; Ex. 3031, p. 85 of 191.

[174] Trial Tr. 1309:19–1311:1.

[175] Trial Tr. 501:5–18, 627:3–628:4, 633:17–635:17, 4097:1–8; Ex. 3031, p. 130 of 191.

[176] Trial Tr. 233:1–7; Ex. 3031, pp. 81, 120 of 191.

[177] Trial Tr. 239:2–18; Ex. 3031, pp. 155-156 of 191.

[178] Trial Tr. 243:23–244:2; Ex. 3031, pp. 157, 175 of 191.

[179] Trial Tr. 244:3–6; Ex. 3031, p. 157 of 191.

provided—once ADOL paid Netacent, then Netacent would pay SSO. In essence, payment by ADOL to Netacent was a condition precedent that would trigger Netacent's obligation to pay SSO.

SSO immediately provided Netacent access to the Azure Portal, but the full transition was not complete until August 2022. ADOL paid Netacent approximately $3,630,600 in three separate payments after this hearing. However, Netacent did not pay SSO either the past due amount or additional amounts that SSO earned between February 2022 and August 2022, when the transition was complete.

Despite the testimony of Isaac and representations of counsel,[180] Netacent did not pay SSO. Not only was this inconsistent with counsel's and Isaac's representations to another court, it was hard to explain because two of the three payments Netacent received corresponded to specific services SSO provided to ADOL.[181]

After learning that Netacent had been paid approximately $3,600,000 by ADOL, SSO sent an invoice to Netacent requesting payment for its services for the period between February 25, 2022, and August 25, 2022, in the amount of $916,667.[182] Netacent has never paid SSO for any of the hosting services provided to ADOL by SSO, either before or after the Feb. 25, 2022, hearing on Netacent's Motion for Temporary Restraining Order. At least in part, Netacent's refusal to pay SSO consistent with statements made at the February 25, 2022, hearing resulted in SSO reducing its workforce by 75%.[183] Isaac's testimony before this Court explaining Netacent's failure to act in a manner consistent with the representations made to another court were not credible.

6. Websites and other petty acts

Prior to the formation of Netacent, Tahmisian had registered both the "tahmisian.com" and "netacent.com" domain names through his network solutions account.[184] Since July of 2013, Netacent has paid for the Netacent network solutions account and all domains Netacent owns as

[180] During this period of state court litigation, Reuben Ortega represented Netacent and Elijah Watkins represented Isaac Barrett individually. Later, Mr. Watkins assumed representation of Netacent while continuing to represent Isaac individually.

[181] Trial Tr. 260:13–261:7, 642:8–645:15.

[182] Netacent never notified SSO of the approximately $3,600,000 million in payments received from ADOL in May 2022. Trial Tr. 261:8–13, 645:22–646:9, 4094:10–4095:22.

[183] Trial Tr. 647:2–23; Ex. 2210. In the first 10 months of 2022, SSO had four layoffs of 25% of the workforce each time.

[184] Ex. 1222.

well as those owned by Tahmisian.[185] "Tahmisian.com" was registered on February 26, 2005, and "Netacent.com" was registered on December 26, 2007.[186]

After Tahmisian was removed as president by Isaac, Watt, and Jordan, Issac used his administrative access to change the password on Tahmisian's personal email account that he had been using for the last 14 years. Using his new access, Isaac read Tahmisian's emails and noted different services Tahmisian utilized for personal matters, such as TurboTax or Uber, that were tied to Tahmisian's email. Isaac then caused password resets to be sent to this email and changed the passwords.

As of May 16, 2022, the registrant and administrative contact for "Tahmisian.com" was listed as Isaac and the registrant and administrative organization was listed as Netacent, Inc.[187] As of January 3, 2024, the registrant and administrative contact for "Netacent.com" was Isaac.[188] Isaac stated he made those changes for security reasons.[189]

The "solidstateops.com" domain name was registered by Tahmisian using the same Network Solutions account on October 20, 2019, while he was the President of Netacent.[190] On October 11, 2022, the Solid State Operations Inc. trademark was registered in Idaho.[191] On May 16, 2022, Isaac changed the registrant and administrative contact for "solidstateops.com" to himself, and the registrant and administrative organization was listed as Netacent.[192] All email sent to "tahmisian.com" and "solidstateops.com" was redirected to Isaac or Netacent, permitting them to read and act, or not act, upon the contents of those email messages.[193] By intercepting emails intended for Tahmisian personally and for SSO, Isaac and Netacent effectively interfered with SSO's efforts to operate its business and invaded Tahmisian's privacy.

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185 Ex. 2304-2–3, 12; Trial Tr. 20:7–22:6, 36:2–38:18, 39:11–16, 88:4–24, 2532:2–2533:25, 2535:8–19, 2538:14–2539:1, 2533:17–2534:13, 3696:17–20, 4871:13–4872:2.

186 Exs. 1222, 1223.

187 Ex. 1222.

188 Ex. 1223.

189 Trial Tr. 2536:13–17, 2537:20–2538:13; 2531:11–2532:1, 2534:14–22.

190 Doc. 253-1 at ¶ 250; Ex. 1233; Trial Tr. 2533:10–2535:7, 2550:20–2552:1, 3696:17–20.

191 Ex. 1231.

192 Ex. 1226.

193 Tr. 2523:19–2524:16.

Isaac also established a new entity, "Solid State Ops LLC." Netacent was listed as the registered agent.[194] Isaac testified he created this company out of "curiosity."[195] Isaac's testimony about these matters was not convincing and further undermined his credibility with the Court. While it may have been difficult to admit that he did these things to frustrate or harass Tahmisian and SSO, characterizing his motivation as "curiosity" likely bordered on perjury.

L. Netacent interferes with a contract awarded to SSO

The Georgia Department of Labor ("GDOL") issued a Sole-Source Intent to Award a contract worth $26,000,000 to SSO on September 9, 2022 ("Intent to Award").[196] SSO's net profit on the GDOL contract would have been at least 19% of the contract amount (i.e., $4,940,000).[197] Prior to issuing the Intent to Award, GDOL determined, consistent with applicable guidelines, that the sole-source award to SSO would be proper.[198]

The Intent to Award contemplated that SSO would modify the iUS 2.0 system to operate on SSO's Harbor 9 platform and deploy it in Georgia.[199] Although iUS 2.0 had not been deployed in any state, it was a viable product that worked.[200] Netacent was not prepared to implement iUS 2.0 in October 2022.[201] Though substantial effort would be required, SSO was, as of October 2022, capable of fulfilling all requirements of the Intent to Award.[202]

Data Station and iUS are competing products.[203] Netacent has not marketed or implemented any version of iUS in any state since Data Station was developed.[204] But Data Station was specifically not what GDOL wanted, having considered and rejected any proprietary

[194] Ex. 1234.

[195] Trial Tr. 2518:14–2520:2.

[196] Trial Tr. 588:3–589:1; Ex. 3027.

[197] Trial Tr. 4105:8–to 4107:25.

[198] Trial Tr. 1322:2–1324:11; Ex. 2289.

[199] Trial Tr. 340:2–13, 349:24–350:12; Ex. 3027.

[200] Trial Tr. 5248:13–5249:18.

[201] Trial Tr. 5528:17–to 5529:7.

[202] Trial Tr. 577:13–to 579:1, 5250:3–17; Ex. 3027.

[203] Trial Tr. 180:6–8; 348:17–21.

[204] Trial Tr. 178:21–179:1, 179:22–180:3, 955:12–22, 959:5–960:22, 1148:19–1149:5, 1162:10–1163:11.

UI system, which charges a "subscription fee" for ongoing modernization and maintenance.[205] Data Station is a proprietary product.[206] GDOL wanted a transfer system instead. Hence SSO's inclusion of iUS 2.0 in its proposal.

As a basis for choosing to award the contract to SSO, GDOL determined that SSO, unlike other companies, does not sell proprietary UI products.[207] GDOL determined that a proprietary system like Data Station was not desirable due to the cost of ongoing licensing and maintenance fees, which the state could not afford.[208] GDOL also determined that a proprietary system was not desirable because GDOL would have limited ability to modify it.[209] Netacent's customers cannot modify its Data Station software; only Netacent can do so.[210]

Moreover, GDOL required a cloud-based platform, and SSO's Harbor 9 met GDOL's needs.[211] In contrast, Data Station is not a cloud-based platform, so Netacent would have used Microsoft Azure to host the iUS system for GDOL, despite having never hosted iUS on Azure.[212] GDOL selected a transfer system because it better suited their requirements and budget. Data Station was excluded from its consideration.[213] GDOL required a non-disclosure agreement ("NDA") with Idaho, as iUS was developed there. There is no NDA in the record for Netacent to access Idaho's iUS 2.0 code,[214] however SSO had entered into an NDA to access Idaho's iUS 2.0 code.[215]

The GDOL Intent to Award was based on required delivery of the iUS 2.0 system within 12 months, which SSO was prepared to do. While Netacent employees felt they could "have got it up and running as best we could in that time period," they did not have answers to questions

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205 Ex. 3027, pp. 104, 105 of 135.

206 Trial Tr. 127:18–131:3; 136:12–25, 2679:1–20, 5086:5–25; Ex. 2090-9 at ¶ 10, Ex. 2088.

207 Ex. 3027, p. 110 of 135.

208 Trial Tr. 139:2–21; Ex. 3027, pp. 104, 105 of 135.

209 Ex. 3027, pp. 104, 105 of 135.

210 Trial Tr. 137:11–22.

211 Ex. 3027, p. 110 of 135.

212 Trial Tr. 147:15–148:2; 150:25–151:3.

213 Trial Tr. 138:20–139:1, 919:19–21; Ex. 3027, p. 105 of 135.

214 Trial Tr. 141:1–7, 1343:2–25; Ex. 3027, p. 109 of 135.

215 Ex. 3027, p. 109 of 135.

necessary to determine whether the 12-month timeline requirement was feasible.[216] Finally, GDOL was under significant time pressure. If it had not entered into an Intent to Award contract by September 29, 2022, funding for the GDOL project would be lost.[217]

Isaac learned of the Intent to Award while at a conference.[218] Netacent's counsel, Reuben Ortega, testified that he received an "urgent call" informing him that, "Georgia is about to write a huge check to SSO using our technology, can you help us."[219] Less than 48 hours after learning of the Intent to Award, Netacent filed a formal protest on Friday, September 23, 2022.[220] GDOL did not receive it until Monday, September 26, when they returned to work from the weekend. In essence, this left GDOL only five days to resolve the protest or lose its funding.

Each Netacent witness sought to emphasize that the protest was carefully researched. According to his testimony, Jordan utilized the Georgia Procurement Manual and other available resources to ensure everything Netacent did complied with the procedures and the law. The credibility of his testimony declined when he emphasized that he did his "due diligence and operated in my best business etiquette," later explaining he went through the protest "on a moral ground, legal ground . . . ." Although not artful, he appeared to want to emphasize for the Court that this was a reasonable exercise of his business judgment.

The testimony of each Netacent witness regarding their thoroughness and concern for the fairness and integrity of the process appeared carefully curated,[221] but also impossible for this Court to reconcile with their behavior in the months that preceded the protest. On one hand, Netacent and Isaac claim to be motivated by altruism and goodness, yet on the other hand they had recently represented to another court SSO would be paid for services, apparently having no intention of doing so. Moreover, at the same time they were redirecting Tahmisian and SSO email to Isaac to harass and interfere with SSO and Tahmisian as well as forming a new entity with a name strikingly similar to SSO. On this record, the Court cannot conclude either Isaac, Netacent, or those carrying out Isaac's directives were concerned with the integrity of the procurement process.

Intentions aside, there were also issues with the substance of the protest. SSO notified Netacent that statements made in Netacent's protest to the GDOL Intent to Award were false and

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[216] Trial Tr. 589:9–21; 163:1–164:17; Ex. 3027, p. 124.

[217] Ex. 3027, p. 107 of 135.

[218] David Hopkins remembered learning of the Intent to Award on his birthday, September 21 when "Isaac called us." Trial Tr. 4877:4–23.

[219] Trial Tr: 1248:17–24.

[220] Ex. 3028.

[221] Without exception, the testimony of each Netacent witness was strikingly similar in both substance and verbiage, a fact which at best hints at coaching, and at worst, collusion.

requested that Netacent withdraw or clarify the false statements.[222] SSO notified Netacent that it had provided GDOL with a perpetual, irrevocable, non-exclusive, royalty-free license to Harbor 9, but Netacent did not clarify or withdraw its statement that Harbor 9 is "proprietary software that will create a reliance on [SSO]."[223]

Netacent's protest also stated that the ownership of the intellectual property of Harbor 9 was being litigated in Idaho. This was untrue. The operative state court complaint[224] includes a singular generic reference to proprietary information and an allegation it was appropriated by SSO. However, neither the claims nor the prayer for relief relate to this allegation. The remaining 102 paragraphs neither refer to Harbor 9, nor seek any relief related to SSO's use of Harbor 9. Instead, Netacent's conversion claim explicitly refers to "funds" and "contracts," not proprietary information or intellectual property. Its unjust enrichment claim includes a reference to intellectual property and seeks monetary damages. The prayer does not request an injunction or other specific relief that in any way would have prevented SSO from utilizing Harbor 9 for the GDOL project. Netacent refused to withdraw or clarify any of the statements made in its protest to the GDOL Intent to Award.[225] Its strident approach is difficult to reconcile with the record.

The testimony of Jordan and others professing the best of intentions when filing the GDOL protest are undermined by Netacent's willingness to withdraw the protest in exchange for concessions by Tahmisian similar to the concessions demanded by Reuben Ortega a year earlier.[226] The concessions included:

1. Assignment of Tahmisian's shares in SSO to Netacent;
2. Tahmisian receives a percentage of GDOL profit;
3. Tahmisian repays "the money he loaned to his mom and aunt";
4. Tahmisian dismisses his wage claim;
5. Standard Terms.

Notably absent was any requirement that Tahmisian void all stock transactions with Watt and McAllister, step down as president, and report directly to or assign all voting rights to Isaac. These terms were not necessary because, just three days later, all the shareholders voted to increase the number of shares from 10,000 to 100,000 and distribute the new shares to a combination of existing shareholders and employees.

As will be discussed below, GDOL urged SSO and Netacent to partner on the project so the contract could be awarded and the state would not lose its funding. Netacent refused, and its

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[222] Ex. 3037.

[223] Trial Tr. 197:8–198:6, 5087:3–14; Exs. 3037; 3027, p. 109 of 135.

[224] Ex. 3062.

[225] Trial Tr. 204:4–9.

[226] Ex. 3038.

goal of preventing SSO from getting the contract was successful. GDOL withdrew its Intent to Award based on the protest.[227] Later it sent the project out for competitive bidding—precisely the result Jordan and other Netacent witnesses testified they wanted. It is telling, and severely undermines their stated desire for a fair process, that Netacent opted to not submit a competitive bid once that process was initiated.[228]

Although there were multiple bidders on the GDOL project, Netacent made no effort to satisfy the bid requirements.[229] SSO was unable to participate in the GDOL bidding process in part because Isaac had taken control of SSO's solidstateops.com email address.[230] As a result of losing the GDOL contract, SSO was forced to lay off the remainder of its workforce after having laid off most of its employees following the February 25, 2022 hearing on Netacent's Motion for Temporary Restraining Order.[231] Netacent's protest accomplished its goal: GDOL did not write a huge check to SSO.

M. 2022, Isaac's first year as president of Netacent and Stock Expansion

On October 3, 2022, the shareholders held a meeting and voted to approve the 2022 Equity Incentive Plan ("EIP").[232] Although Tahmisian received notice of the October 3, 2022 meeting, he neither attended nor voted on the proposal.[233] Through the EIP, Netacent increased its total shares from 10,000 to 100,000, issuing 96,000 shares and keeping 4,000 shares in reserve.[234] The shares were then distributed among the employees with a four-year incremental vesting period.[235] This was purportedly done to incentivize employees to stay with the company. However, this action also served to dilute the shares held by Tahmisian, as he was offered no additional shares because he was no longer employed by Netacent.[236]

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[227] Trial Tr. 445:5–13, 522:3–7.

[228] Trial Tr. 219:11–220:10, 4922:8–4923:6.

[229] Trial Tr. 220:3–5, 5103:9–5105:1.

[230] Trial Tr. 616:15–617:10, 2526:4–24, 2528:6–2530:4.

[231] Trial Tr. 648:13–649:1.

[232] Exs. 1229; 2305-49–75; Trial Tr. 5468:4–6.

[233] Trial Tr. 3834:6–17.

[234] Ex. 2305-82.

[235] *Id.*

[236] Trial Tr. 5469:20–23.

Netacent lost $2,800,000 dollars in 2022, was heavily in debt, and needed to secure a contract with a second state, making its refusal to partner with SSO on the GDOL project even more incredible.[237] Despite these losses and Isaac's lackluster performance as President, he was the biggest beneficiary of the new EIP scheme.[238] After its adoption, Netacent's share distribution was as follows:[239]

Share Ownership	
Gregg Tahmisian	3,200
Isaac Barrett	49,486
Jordan Barrett	15,464
Quinn Watt	15,464
Dominique Barrett	3,093
David Hopkins	3,093
Joshua Fieldstad	200
Brian Jenks	2,000
Curtis Barrett	2,000
Sandra Fitzpatrick	2,000

N. Intellectual Property and Other Issues

1. Data Station Code

Data Station was developed by Netacent and first implemented in Alabama. SSO created its own platform, Harbor 9, to seamlessly host Data Station and software developed by other developers. Indeed, under "Project Gimlet," SSO took "parts of Netacent's Data Station code and turn[ed] it into a more modular platform that would work with Harbor 9."[240] Finally, the record is abundantly clear that Tahmisian, wearing either a Netacent or SSO hat, worked diligently to market Data Station to other states.

In the February 9, 2020 email announcing SSO, Tahmisian stated that "there will be strict intellectual property divisions between the two companies, with Netacent sharing IP only as necessary and binding [nondisclosure agreements] signed by SSO and its employees."[241] However, no such agreements were signed by SSO employees, yet Tahmisian and other SSO

[237] Trial Tr. 3107:1–9, 4223:6–9; 5468:8–9.

[238] Trial Tr. 5470:1–8.

[239] Ex. 2305-82.

[240] Ex. 3000-3; Trial Tr. 3879:19–23.

[241] Ex. 1062-3.

employees all maintained their administrative access to 100% of Netacent's source code while SSO was developing Harbor 9.[242]

During trial, Tahmisian admitted that SSO employees had full administrative access to the Data Station code, as well as that for affiliated Data Station utilities such as Data Call, PUT Processor, and Document Print. [243] For a time, SSO controlled Netacent's source code with administrative access, such that Netacent employees could only access their own code by going through SSO.[244]

Unfortunately, any attempt by this Court to determine whether Harbor 9 was dependent on Netacent's trade secrets or infringed its copyright cannot be undertaken because Netacent did not comply with its ongoing duty to supplement its discovery responses. For the first time just ten days before trial, Netacent proposed that 1,000,000 lines of source code be provided to the Court with limited screen shots it would use as exhibits at trial. SSO and Tahmisian objected for many reasons, but SSO's recognition that the late "supplementation" precluded it from having sufficient information to assess whether the cost of a retained expert to review the source code might be justified, was compelling. For the reasons explained in its Order, the Court denied Netacent's motion to supplement.[245] The Netacent parties attempted to revisit this issue again in the middle of trial and this Court again denied the relief as a last minute attempt to ambush Tahmisian and SSO after withholding this information during discovery.[246]

O. Netacent's Expert on Damages

Netacent retained an expert, Glenn Karlberg, who produced a report that includes a series of findings and a damages analysis.[247] Mr. Karlberg's opinion relied almost entirely on materials provided by Netacent—consisting largely of selected documents from the informal "audit." While certainly possessing solid credentials, in this case, Mr. Karlberg did no independent research and many of his opinions are based on limited information. Apparently recognizing this, his expert report begins with a substantial qualifier, explaining it is neither an audit nor does it comply with generally accepted auditing standards or attestation standards. The expert report relied on a narrow subset of documents.[248]

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[242] Trial Tr. 3884:8–3885:2.

[243] Trial Tr. 4151:21–4152:7; 2888:19–2889:4; 3878:1–22.

[244] Trial. Tr. 4151:21–25, 4936:10–4938:2.

[245] Doc. 209.

[246] Doc. 255.

[247] Mr. Karlberg's qualifications in the field of forensic accounting, restructuring, and damage analysis were stipulated to by all parties during trial. Trial Tr. 4270:25–4271:13.

[248] The Report identifies 20 different documents that Mr. Karlberg relied upon. There is also an indication that he relied on additional undisclosed documents that were excluded from the list for

According to his damages analysis, Netacent suffered damages in excess of $40,000,000. With accrued prepetition judgment interest this number exceeded $60,000,000. Mr. Karlberg's opinions generally mirror the audit report completed by Jordan in January 2022. At trial, Mr. Karlberg testified that he relied on Netacent's internal audit report, and his opinion is consistent with that report.[249]

Mr. Karlberg categorized Netacent's alleged damages in eight different ways:

1. Alabama Contract Analysis;
2. Alabama/NTT Data Contract Analysis;
3. Hawaii Contract Analysis;
4. Arizona Contract Analysis;
5. Kentucky Contract Analysis;
6. John McAllister Shares;
7. Quinn Watt shares; and,
8. La Arcadia Investment Corp.

Throughout his testimony, Mr. Karlberg referred to his reliance on Netacent management for information,[250] along with presumptions and assumptions he made.

Cross examination of Mr. Karlberg highlighted fallacies with his report. For example, he testified that he had an inadequate understanding of the underlying contracts between SSO, ADOL, and Netacent. Consider the following:

> Q: Is there any good or service that SSO could provide within the State of Alabama that Netacent would not lay claim to in that scenario?
>
> A: I just dealt with -- with the monies that went -- that -- that actually went into – into SSO from coming from the Alabama Department of Labor. So, if there's something else besides those, I didn't -- I don't know.[251]

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the sake of brevity, making it difficult to assess the complete universe of information he relied upon. Despite this, the Court observed that Mr. Karlberg did not attend the trial, did not review the many exhibits presented to the Court, and did not have the benefit of witness testimony.

[249] Trial Tr. 4276:3–8.

[250] "It was provided to us by Netacent management in terms of how they were – how they budget their business." Trial Tr. 4318:14–21.

[251] Trial Tr. 4399:15–22.

His response to the question is indicative of an analysis that emphasized deposits into SSO's account.[252] Mr. Karlberg testified that he did not always have enough information to reconcile "deliverables" and statements of work with "what was being paid for." In connection with Exhibits 3005, 3006, and 3003, he had no reason to dispute that SSO did the work it agreed to perform under those agreements.[253] Similarly, he had no reason to dispute SSO did the work it agreed to do for Hawaii.[254]

On cross examination, Tahmisian noted entries that identified ADOL as the customer but in the same line of Mr. Karlberg's exhibit, refers to work for Hawaii.[255] In his testimony that followed, Mr. Karlberg conceded that he did not consider the Hawaii call center as a separate deliverable. Instead, he explained, "I took the dollars that came over from Hawaii and assumed that they were related to a contract with – with Netacent for the use of Data Station."[256] His analysis fails to acknowledge SSO performed call center operations for Hawaii and was paid separately for that work.

Next, Mr. Karlberg testified that under his analysis, "there was a contract with Netacent, and there was representations that SSO was the parent company and sole provider of Data Station," so there was no good or service that SSO could provide to the State of Alabama that would not be tied to Netacent's contract.[257] His analysis was dependent in part on the representation that SSO was Netacent's parent.

Subsequent examination of Mr. Karlberg demonstrated his focus on the "parent" representations to ADOL was flawed, for at least two reasons. First, he conceded there were no exhibits in his report that corresponded to this part of his analysis, but he had seen an email. [258] Next, after reviewing Ex. 1066, which explained to ADOL the composition of shareholders in Netacent and SSO, Mr. Karlberg conceded the email does not create the "impression" SSO is the

[252] Trial Tr. 4399:23–4401:9.

[253] Trial Tr. 4353:4–10.

[254] Trial Tr. 4354:10–22. It is difficult to reconcile Mr. Karlberg's concession Netacent was not damaged by SSO's work as a subcontractor for NTT Data, Trial Tr. 4355:5–13, with Exhibit B in his report that concludes Netacent's damages related to SSO work for NTT was $1,022,130. Ex. 2279-23.

[255] Ex. 2279-6; Trial Tr. 4389:2–4491:8.

[256] Trial Tr. 4392:6–20.

[257] Trial Tr. 4392:21–4393:8.

[258] Trial Tr. 4393:23–4394:16.

parent of Netacent.[259] These mistakes suggest Mr. Karlberg simply mimiced Isaac and Jordan's audit and theories of the case.

Mr. Karlberg further testified that the ADOL call center payments SSO received as a subcontractor for NTT Data should have been received by Netacent, because the activity with ADOL was based upon ADOL believing that SSO was the parent company of Netacent. This logic fails. NTT Data selected SSO as a subcontractor, not ADOL. Further, the NTT Data contract was entered in May 2020, and nothing in the record shows Tahmisian represented to ADOL that SSO was the parent of Netacent prior to May 2020.[260]

At bottom, the record suggests Mr. Karlberg was provided a carefully curated set of documents that closely replicate those compiled by Jordan in January 2022. Not surprisingly, Mr. Karlberg's expert report closely mirrors Jordan's audit, but the conclusions are not tenable because Mr. Karlberg neither attended the trial nor had the benefit of the universe of exhibits admitted at trial. Mr. Karlberg was uninformed regarding many critical facts of the parties' disputes. Throughout the trial, testimony by one witness was controverted by another. For example, Jordan's or Isaacs's testimony may have been countered by Tahmisian, Curtis Reese, McAllister, and others, or vice-versa, forcing the Court to assess the credibility of the witnesses. Mr. Karlberg relied exclusively on the information he received from Netacent, Isaac, and Jordan.

For example, his analysis assumed that the "Netacent board did not know what was going on and did not approve things."[261] This understanding is contradicted in part by Tahmisian's email in February 2020, and McAllister's response endorsing the division of work between SSO and Netacent as maintenance and development, respectively. Similarly, it does not account for the Board's day-to-day observations. Netacent employees doing work that benefited SSO; and SSO employees doing work that benefited Netacent. And, through at least the SSO call center operations, SSO had subsidized Netacent.

Finally, Mr. Karlberg's analysis focused on the sole source letter SSO sent to ADOL explaining that it was the exclusive reseller of Netacent products. He testified that he relied on Netacent's own audit and its conclusion that the sole source letter was not authorized by the Board.[262] This concession lends credence to the Court's impression that, rather than act as an

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[259] Trial Tr. 4395:2–4397:17.

[260] Trial Tr. 2618:17–2619:3 (Isaac testimony), *but see* Trial Tr. 3712:7–11 (Tahmisian testimony). Netacent characterizes the Sole Source Letter from SSO to ADOL as an assertion that SSO is the "parent" company of Netacent. However, that is not entirely precise. The sole source letter states only that "Solid State Operations Inc. is the only vendor licensed to sell and support Netacent products." Ex. 2191. The letter further states, "I certify that the Data Station service for the Alabama Department of Labor must be purchased from Solid State Operations, Inc." *Id*.

[261] Trial Tr. 4416:8–11.

[262] Trial Tr. 4417:20–4419:3.

independent expert, Mr. Karlberg's objective was to lend credibility to the audit Jordan hastily completed in January 2022, which effort was far from comprehensive, occurring shortly after Watt's disclosure that he had sold his shares and Isaac's realization that Tahmisian may own 52% of Netacent's stock.

The testimony and exhibits at trial refute the Netacent audit's findings as explained above. The record suggests Netacent did not fully inform Mr. Karlberg of significant relevant facts that likely would have assisted him with his damages analysis. The Court cannot, and will not, speculate on how his findings and conclusions may have differed had he been fully informed.

P. This Litigation

On May 31, 2023, Tahmisian and SSO filed a complaint against Defendants in this case.[263] On August 7, 2023, Defendants filed their answer and counterclaim alleging various claims against Tahmisian and SSO.[264] Specifically, Netacent has alleged the following counts against SSO and Tahmisian:

1. Fraud – against Tahmisian and SSO
2. Fraud by Nondisclosure – against Tahmisian
3. Unjust Enrichment – against Tahmisian and SSO
4. Breach of Fiduciary Duty – against Tahmisian
5. Misappropriation of Trade Secrets – against Tahmisian and SSO
6. Copyright Infringement – against Tahmisian and SSO
7. Tortious Interference with Prospective Business Advantage – against Tahmisian and SSO

Tahmisian and SSO later filed an Amended Complaint (the "Complaint") alleging 17 claims against Defendants.[265] SSO specifically alleged four claims against Defendants including Promissory Estoppel (Claim 18), Accounting (Claim 17), Interference with Prospective Economic Advantage (Claim 16), and Trademark Cyberpiracy under 15 U.S.C. § 1125(d) (Claim 15). The balance of the claims against Defendants were brought by Tahmisian, including the following:

1. Objection to Proof of Claim – against Netacent
2. Declaratory Judgment (Tahmisian is the Majority Shareholder) – against Netacent, Watt and McAllister
3. Declaratory Judgment (Lawsuit Not Authorized) – against Netacent

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[263] Doc. 1.

[264] Doc. 20.

[265] Doc. 34. The Netacent defendants filed an answer to the Amended Complaint. Doc. 35.

4. Judicial Determination Pursuant to Idaho Code §§ 30-29-749 and 30-29-152 against Netacent[266]
5. Declaratory Judgment (Ineffectual Corporate Actions at Board Meetings and Via Invalid Written Resolutions) – against Netacent
6. Unpaid Wages Under Idaho Code §§ 45-601, et seq. – against Netacent
7. Conversion of Property (Stock Shares) – against Netacent, Watt and McAllister
8. Conversion of Property (Domain Names) – against Netacent and Isaac
9. Civil Conspiracy/Conversion — against all Defendants except McAllister[267]
10. Declaratory Judgment – against Netacent and Isaac
11. Violation of the Automatic Stay – against Netacent and Isaac
12. Turnover of Property of the Estate – against Netacent and Isaac
13. Breach of Contract (Sale of Shares) – against Watt and McAllister
14. Breach of Fiduciary Duty – against Isaac
15. Trademark Cyberpiracy Under 15 U.S.C. § 1125(d) – against Netacent and Isaac
16. Interference with Prospective Economic Advantage – against Netacent and Isaac
17. Accounting — Against all Defendants except McAllister[268]
18. Promissory Estoppel – Against Netacent and Isaac
19. Contribution/Indemnification – Against Netacent and Isaac

Netacent filed a Motion for Summary Judgment on Counts 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, and 19, but it was denied before trial.[269] However, the briefing related to it narrowed the issues involving McAllister. The Court concluded there were no genuine issues of material fact that Tahmisian acquired McAllister's shares in Netacent, giving Tahmisian a 42% interest in the company. Having concluded McAllister sold his shares to Tahmisian, McAllister was entitled to summary judgment on Tahmisian's conversion claim.

Netacent's summary judgment briefing offered the Court a glimpse of its approach at trial. In some instances, Netacent's characterization of the facts was misleading and its legal arguments were not always anchored in the law. For example, Netacent argued decisions by the state court were the law of the case, and this Court was bound to adopt those decisions.[270] However, this is not so. Instead, the law generally provides that findings made when ruling on a preliminary injunction motion do not constitute law of the case.[271] More importantly, the state

[266] This claim was dismissed as to McAllister only during trial. Trial Tr. 3657:7–3658:4.

[267] *Id.*

[268] *Id.*

[269] Docs. 46, 142–43.

[270] Doc. 85 at 9.

[271] *Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. U.S. Dep't of Agric.*, 499 F.3d 1108, 1114 (9th Cir. 2007) (ordinarily "decisions at the preliminary injunction phase do not constitute the law of the case," principally because the record is not fully developed at the

court explicitly stated in its decision that "This ruling did not resolve the enforceability, validity, or terms of any agreements between Mr. Tahmisian and Mr. Watt or Mr. McAllister."[272] This was not an isolated incident where scrutiny of the law or facts undermined Netacent's arguments and credibility.

Q. Witness Credibility at Trial

Over the course of the trial, this Court heard testimony from 19 witnesses and admitted hundreds of exhibits. The Court observed each witness's testimony and, in some instances the Court questioned the witness's candor and credibility. For example, on Day 13, Netacent witness Sergey Sagan initially testified that he had lunch with Isaac three to six months before the trial, and the singular reference to the trial during lunch was whether he was willing to testify. Mr. Sagan reiterated this testimony when questioned on it but eventually conceded that he and Isaac had a more substantive conversation about the matters he would testify about.[273]

Similarly, the Court observed Craig Barrett testify confidently and competently that funds were "comingled," and in the next instance, disavow familiarity or knowledge of other financial transactions. In response to the Court's inquiry, Craig testified that, without any direction from counsel, Isaac, or anyone else, three weeks before trial he decided to independently review certain U.S. Bank records.[274] Having observed the witness and his response to the Court's questions, the Court harbors concerns about this witness' candor.[275]

Moreover, Jordan Barrett was confident when testifying directly, but in response to cross examination on precisely the same topics, his memory was less reliable and he struggled to

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preliminary injunction stage and further development of the factual record as the case progresses may well require a change in the result.); *Ctr. for Biological Diversity v. Salazar*, 706 F.3d 1085, 1090 (9th Cir. 2013) ("In general, however, our decisions at the preliminary injunction phase do not constitute the law of the case. This is true for the reason that a preliminary injunction decision is just that: preliminary. This rule acknowledges that decisions on preliminary injunctions … must often be made hastily and on less than a full record.") (internal citations omitted).

[272] Doc. 46-14 at p. 30.

[273] Trial Tr. 4741–4753.

[274] Trial Tr. 5707–5709.

[275] Given the volume of exhibits, it is improbable that a witness would independently elect to review specific financial documents, testify to a conclusion based on that review, and suggest that this was a mere coincidence rather than the product of advice of counsel or request of a party. Had he testified that he spoke with counsel or Isaac, that would have been more credible and depending on the circumstances, not necessarily indicia of colluding with Isaac or improper trial preparation. Instead, he insisted that weeks before trial he sua sponte reviewed exhibits he would be questioned about at trial.

answer the questions being asked.[276] The overall impression was that Netacent witnesses responded to questions on cross examination with talking points, rather than honest testimony.[277]

Finally, more so than any other witness, Isaac's responses to pointed questions on cross examination were evasive, argumentative, and intended to reinforce the correctness of his own actions while maligning Tahmisian.[278]

As the Court has considered the transcripts, the importance of Federal Rule of Evidence 602 has become increasingly paramount. Although not objected to at trial, or instances where the objection was overruled, the Court's fact finding takes into account each witness' personal knowledge, while hearsay, conjecture, and speculation are not relied on.

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[276] For example, he testified on direct that he was responsible for preparing demonstrative exhibits that illustrated total aggregate funds received by SSO as well as any amounts Netacent received related to work performed by either company. His testimony was clear and confident. Trial Tr. 4552–4554. On cross examination, however, he struggled to answer questions about the contracts in place between Netacent and ADOL. Trial Tr. 4573–4582. Absent a clear understanding of the governing contracts, the financial analysis is flawed because it neither accounts for nor recognizes the different work done by SSO and Netacent.

[277] For example, in response to a question about what Jordan Barrett knew at a specific temporal point, he answered the question and volunteered a legal conclusion:

> Q. Did you know in 2020 that that letter was sent to Alabama claiming that SSO was the sole source for Data Station?
>
> A. No, that was a clear conflict of interest.

Trial Tr. 4493:19–25. In another example, he wanted to emphasize that he had exercised his "business judgment," and testified as follows:

> Q. In verifying these items for yourself on the protest, did you rely to some extent on others, including legal counsel?
>
> A. Every -- every -- so I personally went through every single item, and I also did my due diligence and operated in my best business, you know, etiquette, or however you want to say that.

Trial Tr. 4558:22–4559:3. These examples are not an isolated incidents.

[278] *See e.g.* Trial Tr. 143:19–144:10; 171:22–173:4; 175:7–16; 187:1–189:2; 209:3–211:1; 214:2–12; 239:15–241:11; 259:3–10.

R. Post Trial Motions

Following trial, Tahmisian moved to conform the pleadings to the evidence at trial and sought to amend the pleadings to include a claim for shareholder oppression and punitive damages. The Court denied the motion.[279]

Also following trial, Netacent filed a motion seeking to preclude consideration of exhibits not admitted at trial.[280] The Court grants this motion. The parties are responsible for gaining admission at trial of all evidence they wish the Court to consider in resolving the issues before it. Were the Court to consider and rely on evidence not admitted, this would disadvantage the opposing party who would be deprived of the right to explore such evidence through cross-examination or other witness testimony. Accordingly, the motion is granted and the Court has considered only the evidence that was admitted at trial.

V. Analysis and Conclusions of Law

At bottom, this is a shareholder dispute between Isaac and Tahmisian. Every act, accusation, claim, or counterclaim in this litigation revolves around and is animated by the dispute between Isaac and Tahmisian over ownership and control of Netacent. As a result, addressing the disputes over ownership of the shares, and quantifying Tahmisian's interest in Netacent, is a logical first step because that conclusion will inform the resolution of many other disputes.

A. Tahmisian's Causes of Action against Defendants

1. Amended Complaint Claim 2 – Declaratory Judgment, "Stock Ownership"

a. Tahmisian owns 52% of Netacent Stock

Tahmisian requests a judicial determination pursuant to 28 U.S.C. § 2201 that: (1) the Watt PSA is valid and binding; (2) the McAllister PSA is valid and binding; and, (3) Tahmisian owns 52% of the shares of Netacent. This Court concluded at the summary judgment stage that the McAllister PSAs were valid and binding and sees no reason to revisit that conclusion now. Instead, similar principles weigh in favor of finding and concluding the Watt PSA is likewise valid and binding and Tahmisian owns 52% of Netacent's stock, subject to Watt's limited right to receive any economic benefit associated with 10% of the stock.

As a preliminary matter, Netacent has failed to identify any authority under which it had standing to "nullify" or otherwise invalidate a transaction between Watt and Tahmisian. Generally, a third party lacks standing to invalidate or void a contract to which they are not a party or in privity, unless specific exceptions apply. The principle is well established that "one

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[279] Doc 309.

[280] Doc. 323.

not a party to, or in privity with, a contract, cannot sue for its breach." *Dunning v. New Eng. Life Ins. Co.*, 890 So. 2d 92, 97 (Ala. 2003) (quoting *Twine v. Liberty Nat'l Life Ins. Co.*, 311 So. 2d 299, 305 (1975)); *Airlines Reporting Corp. v. Higginbotham*, 643 So. 2d 952, 954 (Ala. 1994). This rule extends to attempts to invalidate or void a contract, as standing is a jurisdictional requirement that must be satisfied for a court to entertain such claims. *Dunning*, 890 So. 2d at 97–98.

The Watt PSA was a valid and enforceable agreement between Tahmisian and Watt. It included a choice of law provision by which Tahmisian and Watt agreed Alabama law would govern.[281] Under Alabama law, a court must follow the plain language of the contract when the contract is unambiguous. *Public Bldg. Auth. of City of Huntsville v. St. Paul Fire and Marine Ins. Co.*, 80 So. 3d 171, 180–81 (Ala. 2010). The court should not equitably rewrite the contract in its construction. *Id.* "When interpreting a contract, a court should give the terms of the agreement their clear and plain meaning and should presume that the parties intended what the terms of the agreement clearly state." *Id.* (quoting *Dawkins v. Walker*, 794 So. 2d 333, 339 (Ala. 2001)).

The Watt PSA recites that seller has agreed to sell and buyer has agreed to buy the shares, subject to certain terms and conditions. Consistent with this recital, Watt agreed to irrevocably transfer and convey to Tahmisian his shares in Netacent at the time of execution. Tahmisian agreed to convey in perpetuity all "financial benefits that inure to the shares," and $100,000. The parties clearly reached an agreement and understood Tahmisian was acquiring the stock but would be required to remit to Watt any economic benefits associated with the stock. The agreement is not ambiguous.[282]

Ordinarily, when an agreement is not ambiguous, consideration of extrinsic evidence is barred. *Colafrancesco v. Crown Pontiac-GMC, Inc.*, 485 So. 2d 1131, 1132–33 (Ala. 1986) (citing *Shepherd Realty Co. v. Winn-Dixie Montgomery, Inc.*, 418 So. 2d 871 (Ala. 1982)). The general rule prohibiting consideration of extrinsic evidence when a contract is not ambiguous has exceptions for fraud and mistake. *Id.* Watt has not filed a single pleading in which he has individually alleged his agreement with Tahmisian was tainted by fraud or mistake. Instead, Netacent has made those accusations and asserted claims against Tahmisian, but it lacks standing to do so because it was not a party to the Watt PSA.

Absent possible agreements between the Netacent parties, one could reasonably expect Netacent in its answer to Tahmisian's complaint to include a cross claim against Watt, challenging the Employment Agreement. Watt would then file a counterclaim against Tahmisian

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[281] Watt and Tahmisian lived in Alabama prior to the implementation of Data Station in that state. To date, despite voluminous filings, no party has applied Alabama law in their analysis of the validity of the agreement.

[282] Netacent contends that its stock was not divisible into voting and non-voting shares, and therefore the Watt PSA is invalid. This argument fails as the agreement makes no such division. Rather, the agreement clearly provides for Watt to sell the whole share and for Tahmisian to remit any financial benefits, such as dividends and sale proceeds, "within five business days of the receipt of such by [Tahmisian]." The agreement even contemplates Tahmisian's actions as the buyer in the event Netacent creates a class of voting stock.

alleging he only sold the stock to him because of the consideration he received through the Watt Employment Agreement. Instead, the pleadings in the case show Netacent is the sole party that has sought to invalidate the Watt PSA. Absent any pleading by Watt challenging the Watt PSA, it is a valid and enforceable agreement.

b. Following Tahmisian and Watt's disclosure of the Watt PSA, Netacent was obligated to permit the stock transfers and recognize Tahmisian as the owner of 52% of Netacent stock

The Watt PSA did not violate Netacent's articles or bylaws, and there was no justification for either Isaac or Netacent's refusal to recognize Tahmisian's acquisition of Watt's shares. Idaho Code § 30-29-627(a) provides that restrictions on the transfer or registration of shares may be imposed by the articles of incorporation, bylaws, or agreements among shareholders or between shareholders and the corporation. According to Netacent's articles, a shareholder may sell their shares to another eligible shareholder. Watt and Tahmisian were both eligible shareholders. Thus, the sale did not violate the articles.

Similarly, the sale did not violate the bylaws, which require only that a stock transfer be made on the stock transfer books of the corporation. Transfers not recorded on the stock transfer book *may* remain valid between the parties. *State ex rel. Peterson v. Dunlap*, 156 P. 1141, 1145 (Idaho 1916). However, the failure to record the transaction on the corporation's books *may* limit its recognition by the corporation. *Id.* If the stock transfer book had been meticulously maintained, Isaac's initial refusal to recognize the transaction might carry greater weight. However, as the stock transfer book had not been updated since 2017, reliance on strict adherence to corporate formalities is wholly unpersuasive.

"[C]ourts have consistently held that the directors of a close corporation may transact the corporation's business affairs informally, especially where informality has become customary." *Rowland v. Rowland*, 633 P.2d 599, 605 (Idaho 1981). As the Idaho Supreme Court explained, "the general rule against informal corporate action exists solely for the protection of the shareholders; if they do not want or need the protection, a waiver may be inferred from their acquiescence in or knowing silence to a corporate decision arrived at through an informal procedure." *Id.* Having failed to maintain the stock transfer book for more than four years, Isaac and Netacent's refusal to update the stock transfer book or otherwise recognize Tahmisian's acquisition of Watt and McAllister's stock is indefensible.

According to the Watt PSA, the transfer agent was directed to issue a new certificate to the buyer. This did not occur at the time of the transaction because it was not disclosed to the transfer agent. However, following the disclosure of the transaction, Watt was required by the PSA to transfer the shares to Tahmisian, and the transfer agent had a duty to cooperate.[283] Rather

[283] McAllister initially indulged Isaac's theories regarding the validity or lack thereof of the transactions, but ultimately, after seeking independent counsel, made every effort to fulfill his contractual obligation. Ultimately, his efforts were frustrated by Isaac and Netacent's counsel at the time.

than comply, Watt joined with Isaac and refused to do so, embracing Isaac's theory that somehow the transaction was tainted by illegality, self-dealing, and conflicts of interest.[284] Nothing in the record supports this theory and a measured objective investigation of the facts in the 48 hours following disclosure of the transaction likely would have shown that. Instead, the evidence conclusively shows Tahmisian entered valid and enforceable agreements with Watt and McAllister. As a result, on October 28, 2021, Tahmisian owned 52% of Netacent's stock.

2. Amended Complaint Claim 7 – Conversion of Property (Stock Shares)

Isaac, Netacent, and Watt converted Tahmisian's property by failing to deliver to him the stock shares he was entitled to receive following disclosure of the Watt and McAllister PSAs. Under Idaho law, conversion is generally defined as "a distinct act of dominion wrongfully asserted over another's personal property in denial of or inconsistent with [the owner's] rights therein." *Peasley Transfer & Storage Co. v. Smith,* 979 P.2d 605, 616 (Idaho 1999); *Carpenter v. Turrell*, 227 P.3d 575, 580 (Idaho 2010). As of October 28, 2021, Tahmisian was entitled to shares of Netacent stock that corresponded to the 20% he acquired from McAllister and Watt.

Netacent had an obligation to Tahmisian to transfer the shares following disclosure of the Watt PSA. "[T]he wrongful refusal of the corporation so to transfer, issue or convert the stock, is an exercise of wrongful dominion over the property, which constitutes conversion." *Hulse v. Consol. Quicksilver Mining Corp.*, 154 P.2d 149, 153 (Idaho 1944). The natural remedy for the failure to transfer the stock is to compel the corporation to register the transfer of stock. *Id.* at 154. Additionally, if the issuer unreasonably delays or refuses to register a transfer, it may be liable for resulting losses. Idaho Code § 28-8-401(2). Rather than transfer the shares, Isaac and Watt caused Netacent to refuse to register the transfer of stock as required by the Watt PSA.

Under a series of contrived rationales, Isaac refused to fulfill his duties as the stock transfer agent and denied Tahmisian his right to have the McAllister and Watt shares transferred to him. Along with his sudden insistence on corporate formalities and maintenance of the stock transfer book, Isaac relied on conjecture and speculation. For a short time, he convinced McAllister to indulge in this speculation, questioning the source of the funds used to acquire McAllister's shares. However, following McAllister's retention of independent counsel, McAllister insisted that his shares be transferred to Tahmisian consistent with the McAllister PSA. Despite this, Isaac refused. Isaac is liable for conversion for his failure as the transfer agent to transfer the shares to Tahmisian.

Unlike McAllister, Watt never obtained independent counsel, or alternatively never obtained independent advice regarding his obligations under the Watt PSA. Throughout the trial, Watt remained committed to the theory that Tahmisian had hoodwinked him in some way

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[284] While transactions involving self-dealing or conflicts of interest generally trigger heightened judicial scrutiny, they are not actionable if the defending directors or majority shareholders can demonstrate that the transaction was fair, taken in good faith, or justified by compelling business reasons. *Shivers v. Amerco*, 670 F.2d 826, 832 (9th Cir. 1982); *Sol. Tr. v. 2100 Grand LLC (In re AWTR Liquidation Inc.)*, 548 B.R. 300, 318–19 (Bankr. C.D. Cal. 2016); *Valley Nat'l Bank v. Trustee for Westgate-Cal. Corp.*, 609 F.2d 1274 (9th Cir. 1979).

resulting in the Watt PSA. Despite this theory, Watt has never filed an action against Tahmisian alleging fraud or negligent misrepresentation, or otherwise challenged in his own right the enforceability of the Watt PSA. Had Watt obtained independent counsel, his actions in January 2022 may have more closely resembled McAllister's. Instead, he is liable for conversion because he refused to transfer his Netacent shares to Tahmisian.

3. Amended Complaint Claims 3, 4, and 5 – Declaratory Judgment, "Lawsuit Not Authorized," and "Invalidity of Corporate Action"

Under Idaho Code § 30-29-152(a), any shareholder may bring an action to determine the validity and effectiveness of any corporate action or defective corporate action. Tahmisian seeks a judicial termination pursuant to 28 U.S.C. § 2201 that actions taken by Isaac, Watt, Jordan, and McAllister, in their various capacities as shareholders or directors, beginning on October 28, 2021, and continuing through a series of successive meetings, were invalid. Much of Tahmisian's arguments stem from two factors: (1) that he is the majority shareholder of Netacent, and (2) that meetings were improperly noticed under the bylaws and Idaho law. Having concluded that as of October 28, 2021, Tahmisian owned 52% of Netacent stock, he was the majority shareholder.

a. Shareholder actions by 48% or less

Shareholder action requires that a quorum of shares be present and that the votes in favor exceed those opposed. Idaho Code § 30-29-725. According to Netacent's bylaws, a quorum consists of shareholders representing a majority of the outstanding capital stock of the corporation entitled to vote at the meeting.[285] Having determined that as of October 28, 2021, Tahmisian owned 52% of Netacent stock, his participation in person or by proxy was necessary to establish a quorum.[286] Absent his participation in person or by proxy, there was no quorum for shareholder voting purposes.

Along with a quorum, notice is required. Netacent's bylaws require ten days' notice of special meetings for shareholders.[287]

b. Director actions require a "majority" to constitute a quorum

To constitute a quorum, a majority of the Board is necessary to transact business.[288] Part way through the trial, everyone agreed that as of October 28, 2021, the Board had five directors: Isaac, Watt, McAllister, Tahmisian, and Jordan. Although the change to five was not formally

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[285] Ex. 2004, ¶ 2.8.

[286] Tahmisian's last payment was made to McAllister by check dated December 4, 2020. From this date forward, his participation was essential to establishing a quorum. Ex. 2203.

[287] *Id.* at ¶ 2.5(b).

[288] *Id.* at ¶ 4.9.

documented, the parties agreed that the change to five had occurred.[289] A quorum would therefore require three directors.

To the extent the October 28, 2021, meeting was a shareholder meeting, any vote by the shareholders was ineffective because Tahmisian did not receive notice and his participation in person or by proxy was essential to establish a quorum. Tahmisian and McAllister's absence did not render any Board action ineffective, because a quorum of three directors was present. However, there was no notice of the meeting.

Special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting, unless the articles of incorporation or bylaws provide for a different timeframe. Idaho Code § 30-29-822. According to Netacent's bylaws, notice of special meetings for directors "*may* be preceded by *at least* two days' notice of the date time and place of the meeting . . . ." (emphasis added).[290] Netacent urges this Court to conclude no notice was required, rather, it was optional. This argument is not persuasive and defies the canon of presumptive usage.

If the drafters of the bylaws had intended for special meetings to be held without notice, as Netacent urges, the bylaws would state "special meetings may be held without notice of the date, time, place, or purpose of the meeting." This language occurs in the very same section permitting regular meetings to be held without notice. Instead, the language for special meetings ambiguously provides that the meeting "may" be held with notice of "at least" two days. This Court considers such variation material. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 170 (1st ed. 2012) (Presumption of consistent usage, "a material variation in terms suggests a variation in meaning"). Accordingly, when read in concert with Idaho statutes, this Court finds that notice of at least two days is required.

No notice of the October 28, 2021, meeting was provided. At the meeting, the "Board" purported to undertake two actions: voiding the Watt PSA and securing legal counsel to pursue legal action. A properly noticed meeting was possible and would have included Tahmisian and McAllister. Isaac, Watt, and Jordan could have voted to approve voiding the Watt PSA and filing suit. Their three votes would have approved the action, and Tahmisian and McAllister would have had the benefit of notice. Idaho Code §§ 30-29-143(a)(2); 30-29-824(c). Instead, the meeting was held surreptitiously and initiated a campaign of unfounded threats and litigation. It was ill informed, impulsive, and damaged Netacent, SSO, and Tahmisian.

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[289] Netacent's bylaws state that the Board of Directors is comprised of two, or possibly three directors. At different times in this action, Netacent has introduced different exhibits that purport to be the governing bylaws. One version refers to two, and another refers to three directors. See Doc. 46-24 and Ex. 2004.

[290] Ex. 2004 at ¶ 4.7.

c. Actions taken at the meeting on November 18, 2021, also suffered from a quorum deficiency

Certain actions taken at the November 18, 2021, meeting were ineffective because a shareholder quorum was necessary and did not exist. According to the minutes of the meeting:

- The shareholders have determined that the "Transaction"[291] between Tahmisian and Watt used corporate funds/liabilities for Tahmisian's personal gain, is void, and authorized Isaac to take legal action;

- The shareholders have determined, after due consideration of all relevant factors and available records, the Corporations stock record should reflect Tahmisian only owned 3,200 shares of Netacent stock, or 32%; and,

- The shareholders removed Tahmisian as a director, and reduced the board from five to four, comprised of Isaac, Jordan, Watt, and McAllister.

Absent Tahmisian's participation personally or through proxy, only 48% of the shares entitled to vote to approve or reject a proposal were present, so there was no shareholder quorum.

Additionally, according to the bylaws, amendment requires an affirmative vote by a majority of the shareholders.[292] This requirement bears emphasis because the shareholders sought to amend the bylaws to provide for four directors rather than five, and to remove Tahmisian as a director. This action was invalid without Tahmisian's participation as a shareholder. However, it is reasonable to expect that with five directors, Isaac, Watt, and Jordan would have still voted in favor of filing suit against Tahmisian. As a result, the Court cannot conclude that Netacent's decision to file suit was not authorized because such an action could have been authorized by the Board.

Tahmisian also challenges his removal as President. Once again, it is reasonable to expect Isaac, Watt, and Jordan would have voted to do that as directors and three of five directors constituted a quorum. Similarly, future actions that required Board approval would remain valid so long as Isaac, Jordan, and Watt voted to approve those actions. Finally, the Court must consider Netacent's Amended and Restated Bylaws allegedly adopted in November 2021, and the EIP that the shareholders voted to approve in October 2022.[293] As noted above, Netacent's original and operative bylaws as of October 28, 2021, permit amendment, "solely by the

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[291] "Transaction" was defined in the minutes to refer to Watt PSA and Employment Agreement. As explained above, Netacent could not invalidate the Watt PSA, but it could challenge the Employment Agreement. Once the Employment Agreement was challenged, Watt likely had a cause of action against Netacent and Tahmisian, but no claim has been plead by him.

[292] Ex. 2004, ¶¶ 4.2, 4.4, and 11.1.

[293] Exs. 1229; 2305-49–75; Trial Tr. 5468:4–6.

affirmative vote of a majority of the voting stock at any regular or special meeting of the shareholders."[294]

Tahmisian did not participate personally or by proxy at any meeting to amend and adopt Restated Bylaws. As there was no quorum, the effort to amend and restate the Bylaws was invalid. Similarly, the EIP is void because Tahmisian owned 52% of Netacent's stock when the meeting was held and he did not participate. There was no quorum. While Tahmisian may challenge other actions based on the absence of a quorum, notice, or both, the passage of time makes remedying some actions more challenging for the Court as explained *infra*.

4. Amended Complaint – Claim 6, Unpaid Wages, Idaho Code § 45-601

The Idaho Wage Claim Act, Idaho Code §§ 45-601, *et seq*., requires that an employer pay to an employee all wages due and owing, i.e., compensation for labor or services rendered by the employee, within the time limits prescribed by that chapter. The Netacent parties make three arguments against payment of wages to Tahmisian: (1) the claim is barred by a two year statute of limitations under Idaho Code § 45-611 because the claim would have accrued on December 31, 2019; (2) Tahmisian was not an employee because he did not have a contract and received an IRS form 1099; and (3) Tahmisian was already paid because his salary was only $5,000. Netacent's arguments enjoy little factual or legal support.

"Wages" under Idaho state law include "compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece or commission basis." Idaho Code § 45-601(7). "Employee" is broadly defined as "any person suffered or permitted to work by an employer." Idaho Code § 45-601(4). When an employee is separated from employment, either by employer or employee, the employer must pay "all wages then due the employee" within ten business days of termination or the next regular payday. Idaho Code § 45-606(1).

When an employer fails to pay wages due, the employee may file a wage claim against the employer to recover the wages, attorney fees and costs, and may recover three times the unpaid wages found due and owing. Idaho Code §§ 45-607; 45-615. The employer need not have acted with malice for the employee to recover treble damages. *Gano v. Air Idaho, Inc.*, 587 P.2d 1255, 1257 (Idaho 1978). Tahmisian was effectively terminated on November 18, 2021. To date, he has not received the same payment in arrears benefit that Netacent paid to Watt and Isaac.

a. Tahmisian's wage claim is not barred by the statute of limitations

Beginning with the statute of limitations issue, Netacent correctly argues that a cause of action for the collection of wages accrues "when an employee has a right to collect the wages that are allegedly owed to him." *Wood v. Kinetic Sys., Inc.*, 766 F. Supp. 2d 1080, 1085 (D. Idaho 2011) (citing *Callenders, Inc. v. Beckman*, 814 P.2d 429, 434 (Idaho Ct. App. 1991)). However, a cause of action does not accrue "if the employee reasonably relies on the employer's

[294] Ex. 2004, ¶ 11.1.

continued promise to pay." *Hutchinson v. Anderson*, 950 P.2d 1275, 1280 (Idaho Ct. App. 1997) (citing *Gilbert v. Moore*, 697 P.2d 1179, 1181–82 (Idaho 1985)).

Netacent was a struggling startup even after the completion of the ADOL RFP. As president and controlling shareholder, it was not unreasonable for Tahmisian to rely on the understanding that he would be paid all wages owed as soon as Netacent was profitable. Accordingly, this Court finds that the statute of limitations did not accrue until Tahmisian's demand for his unpaid wages was denied in January 2022, following his ouster and removal as president in November 2021.

b. Tahmisian was an employee

The Idaho wage claim statutes do not consider independent contractors as employees. *Ostrander v. Farm Bureau Mut. Ins. Co. of Idaho, Inc.*, 851 P.2d 946, 950–51 (Idaho 1992). The contractor/employee distinction is not one of labels, but one of "actual indicia." *State, ex rel Dept. of Labor and Indus. Servs. v. Hill*, 796 P.2d 155, 161 (Idaho 1990). As articulated by the Idaho Supreme Court,

> The general test is the right to control and direct the activities of the employee, or the power to control the details of the work to be performed and to determine how it shall be done, and whether it shall stop or continue, that gives rise to the relationship of employer and employee, and where the employee comes under the direction and control of the person to whom his services have been furnished, the latter becomes his temporary employer, and liable for compensation.

Gropp v. Pluid, 429 P.2d 852, 857–58 (Idaho 1967) (quoting *Pinson v. Minidoka Hwy. Dist.*, 106 P.2d 1020, 1022 (Idaho 1940)). Here, Tahmisian's role was both president of Netacent and its employee. As president, his actions were subject to supervision by the Board. He also performed services as an employee, engaging in programming work and efforts to market Data Station. He even moved to Alabama to more directly interface with ADOL. These activities were done in concert with the activities of other Board members and employees. The Ninth Circuit has held that "an officer who performs substantial services for the corporation is considered an employee, whose wages are subject to FICA and FUTA." *Spicer Acct., Inc. v. United States*, 918 F.2d 90, 93 (9th Cir. 1990).

c. Netacent, at Isaac's direction, seeks to treat Tahmisian differently than Watt and Isaac, without any basis for doing so

Netacent argues Tahmisian has already received sufficient wages to satisfy any amount that he would be owed. It argues Tahmisian's estimate of his wages at $12,500 per month is overestimated by $7,500 since he was only entitled to $5,000 per month. This is wildly inconsistent with compensation paid to other officers and directors, namely Isaac and Watt, who received payment in arrears of $742,352.13 and $654,832.09, respectively.

Neither Isaac nor Watt dispute that each received significant pay in arrears. At the end of 2020, Watt acknowledged that Tahmisian was making personal sacrifices for the benefit of other employees and Netacent. Tahmisian made payment of "back pay" to Watt, rather than to himself, a priority. Watt thanked him and acknowledged the sacrifice Tahmisian and his family had made to realize Netacent's success.[295] Despite this exchange, Watt, along with Isaac and Netacent, now inexplicably urges this Court to deny Tahmisian the same treatment he conferred on Watt and Isaac as President of Netacent.

This position is unfounded in both fact and existing law and further highlights the inconsistent positions advanced by Netacent, Watt, and Issac. No compelling argument has been presented for this disparate treatment. Having found that Tahmisian's claim is not barred by the statute of limitations, that he is an employee, and that his claim for unpaid wages was substantiated, this Court finds that he is entitled to three times his unpaid wages and interest. Tahmisian's wages during this period amounted to $1,076,460.64, for a total award of $3,229,381.92.[296]

5. Amended Complaint – Claims 8 and 10, 11, 12, Conversion of Property, Declaratory Judgment as to Ownership, Violation of the Automatic Stay, and Turnover

Tahmisian claims that Netacent and Isaac wrongfully converted his domain name "tahmisian.com." After Tahmisian was removed from Netacent, Isaac accessed Tahmisian's email and transferred registration of the domain name into Isaac's name. He has since exercised control over the domain name and refused to return it to Tahmisian. Tahmisian seeks injunctive relief requiring the return of the domain, judicial judgment that he is the rightful owner of the domain, and punitive damages for the stay violation.

Idaho has adopted the Restatement (Second) of Torts which states, "[c]onversion is an intentional exercise of dominion or control over a chattel which so seriously interferes with the rights of another to control it that the actor may justly be required to pay the other the full value of the chattel." *Gissel v. State*, 727 P.2d 1153, 1155 (Idaho 1986) (quoting *Restatement (Second) of Torts*, § 222A (A.L.I. 1965)). Under this approach, a defendant may be liable for intentional conversion even if they believe the possession or sale of the chattel is authorized by law or fact. *Wiseman v. Schaffer*, 768 P.2d 800, 803–04 (Ct. App. Idaho 1989). Additionally, the aggrieved party must be damaged by the wrongful dominion. *Goldberg v. Nw. Trustee Servs.*, 2015 WL 3948467, at *4 (D. Idaho June 29, 2015).

The Idaho Supreme Court has defined three elements of conversion: "(1) that the charged party wrongfully gained dominion of property; (2) that property is owned or possessed by plaintiff at the time of possession; and (3) the property in question is personal property." *Taylor v. McNichols*, 243 P.3d 642, 662 (Idaho 2010). There is no dispute in this case as to elements (1) and (2) because Tahmisian clearly owned the domain name and Isaac has no justifiable property interest in it. However, the question of whether intangible property like a domain name is personal property is a live question in Idaho.

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[295] Ex. 1096.

[296] Trial Tr. 4167:9–19; 4168:22–4169:4.

The Idaho Supreme Court has previously utilized the definition of "personal property" provided by Black's Law Dictionary—"any movable or intangible thing that is subject to ownership and not classified as real property." *Medical Recovery Servs., LLC v. Bonneville Billing and Collections, Inc.*, 336 P.3d 802, 807 (Idaho 2014) (quoting *Black's Law Dictionary* 1337 (9th ed. 2009)). However, the Court qualified that definition by noting, "[m]any courts have limited conversion actions to tangible personal property because conversion, as a cause of action, is 'based on the theory that the property converted was findable;' i.e. tangible." *Medical Recovery*, 336 P.3d at 807 (quoting Val D. Ricks, *The Conversion of Intangible Property: Bursting the Ancient Trover Bottle with New Wine*, 1991 B.Y.U. L. Rev. 1681, 1699 (1991)). The Court ultimately did not determine whether intangible property could be converted under Idaho law with the exception of checks and other negotiable instruments. *Medical Recovery*, 336 P.3d at 807; *Goldberg,* 2015 WL 3948467, at *4 n.2.

The Ninth Circuit Court of Appeals has previously held that registrants have property rights in their domain names. *Kremen v. Cohen*, 337 F.3d 1024, 1029–30 (9th Cir. 2003). While the Court of Appeals acknowledged that property rights and torts are generally governed by state law, its analysis generally found that electronic property is entitled to the same protections as any other type of personal property. *Id.* at 1031–35.

When analyzing state law, a federal court must consider that "the State's highest court is the best authority on its own law. If there be no decision by that court then federal authorities must apply what they find to be the state law after giving 'proper regard' to relevant rulings of other courts of the state." *C.I.R. v. Bosch's Estate*, 387 U.S. 456, 465 (1967). While the Idaho courts have not taken up the question of intangible personal property since *Medical Recover*y, federal courts have continued to note the lack of clarity and have relied on the Black's Law Dictionary definition. *See Doe v. College of E. Idaho*, 2024 WL 710659, at *4 (D. Idaho Feb. 20, 2024); *Goldberg*, 2015 WL 3948467 *4 n.2; *Rosauer v. Detiege (In re Detiege)*, 2021 WL 2613735, at *9 n.9 (Bankr. D. Idaho June 24, 2021). Based on the continued referral to a definition that includes intangible property, this Court finds that intangible property—in this case a domain name—constitutes personal property for purposes of conversion.

Accordingly, this Court finds that the elements of conversion are met. Tahmisian owned personal property (the registration for Tahmisian.com) over which Isaac has wrongfully exercised dominion and control. Accordingly, Isaac is liable to Tahmisian for the full value of the domain name. The evidence on damages attributable to Isaac's conversion was underdeveloped. While Isaac changed passwords and otherwise harassed Tahmisian, the economic consequences of these acts was not established with proof. As a result, the Court will award nominal damages, while explicitly recognizing it was a petty act, committed in bad faith without any justification and one that should have been remedied voluntarily without consideration by the Court.

Tahmisian further claims that Isaac has violated the automatic stay by exercising dominion over the domain name and refusing to turn it over to the estate postpetition. Under *City of Chicago, Ill. v. Fulton*, 592 U.S. 154, 161–62 (2021), mere retention of property of the estate does not violate the automatic stay. Accordingly, this Court finds that the stay is not violated.

However, Isaac is required to turnover property of the estate under § 542(a). Isaac shall immediately turnover the domain name to Tahmisian.

6. Amended Complaint Count 9 - Civil Conspiracy/Conversion

Tahmisian alleges that the Netacent parties engaged in a civil conspiracy to convert his equity position, management rights, and economic rights in Netacent and to convert his domain name. A civil conspiracy that gives rise to legal remedies exists only if there is an agreement between two or more to accomplish an unlawful objective or to accomplish a lawful objective in an unlawful manner. *Taylor v. McNichols*, 243 P.3d at 660.

Civil conspiracy is not, by itself, a claim for relief. *Id.* The essence of a cause of action for civil conspiracy is the civil wrong committed as the objective of the conspiracy, not the conspiracy itself. *Id.* In addition, "[a]n agreement is the foundation of a conspiracy charge and there must be some showing of specific evidence of a plan or agreement to defraud to demonstrate the pendency of the conspiracy at the time the alleged fraud occurred." *Id.* (quoting *Mannos v. Moss*, 155 P.3d 1166, 1174 (Idaho 2007)). To demonstrate the civil conspiracy, the plaintiff must show the existence of such an agreement or plan to maintain the action, otherwise only the independent tort exists. *Wesco Autobody Supply, Inc. v. Ernest*, 243 P.3d 1069, 1086–87 (Idaho 2010).

While this Court can easily conclude that there was collusion among the Netacent parties, Tahmisian has failed to demonstrate the existence of a specific agreement to commit the wrongs. Regarding the deprivation of his interests in Netacent, this Court finds it difficult to conclude that Isaac was able to formulate a plan for civil conspiracy given the short timeline of 48 hours. While the record shows Watt, Jordan and others blindly followed Isaac beginning on October 28, 2021, and continuing through trial, Tahmisian has failed to introduce evidence that would lead this Court to conclude a civil conspiracy existed. Accordingly, this Court finds and concludes Tahmisian has failed to establish a civil conspiracy against him existed.

7. Amended Complaint Claim 14 – Breach of Fiduciary Duty

Tahmisian argues that Isaac breached his fiduciary duties as a director by (1) failing to acknowledge Tahmisian's equity position; (2) conducting Board meetings and other business without notice or a quorum; (3) issuing shares to himself and others (the EIP) without notice or a quorum; (4) asserting claims against him on behalf of Netacent; and (5) converting "Tahmisian.com." To prevail, Tahmisian must show Isaac owed him a fiduciary duty and then breached that duty. *Jordan v. Hunter*, 865 P.2d 990, 904 (Idaho 1993).

In Idaho, a director is responsible to both the corporation and its shareholders as a fiduciary. *Steelman v. Mallory*, 716 P.2d 1282, 1285 (Idaho 1986) (citing *Weatherby v. Weatherby Lumber Co.*, 492 P.2d 43, 45 (Idaho 1972)). This includes the duty to "exercise the utmost good faith in managing the corporation." *Steelman*, 716 P.2d at 1285 (citing *Great W. United v. Great W. Producers*, 588 P.2d 380, 382 (Colo. Ct. App. 1978), *aff'd*, 613 P.2d 873 (Colo. 1980)).

When the liability of a director is at issue, the party seeking to impose liability bears the burden of proving that no defense applies under the articles of incorporation or other applicable law and that the decision was (1) not in good faith; (2) unreasonable or uninformed; (3) lacked objectivity due to a conflict of interest; (4) "a sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation;" or (5) receipt of an unwarranted financial benefit. Idaho Code § 30-29-831(a)(2).[297] The party seeking to establish liability must also show monetary harm to the corporation or shareholders as a result of the director's actions or a similar burden for an alternative remedy. Idaho Code § 30-29-831(b).

As a director, Isaac owed a fiduciary duty to shareholders, including Tahmisian. When considering the factors under Idaho Code § 30-29-831(a)(2), Isaac's actions violate nearly every principle. Isaac did not act in good faith because he attempted to void private agreements between Tahmisian, Watt, and McAllister to usurp control of the company. Having failed to negotiate a buy-out of Tahmisian, or vice versa, Isaac was shocked and threatened to discover Tahmisian owned 52% of Netacent's stock. Rather than accept the fact that Watt and McAllister had placed their confidence in Tahmisian and not him, Isaac instead began to conjure up theories based on snippets of information to obstruct Tahmisian's acquisition of the stock.

The justifications employed by Isaac beginning on October 28, 2021, and continuing through today have proven to be untrue. Up until October 28, 2021, Tahmisian had effectively managed Netacent's business affairs. He had obtained loans from his family that Netacent needed. He recognized software development and maintenance were not the same and formed SSO. He used SSO funds to subsidize Netacent. He was the only officer or director that understood Netacent's finances, income and expenses, the milestones, and the allocation of payments between SSO and Netacent. While Tahmisian certainly might have been more transparent, it is clear he was singularly responsible for Netacent's financial success.

Tahmisian recognized early on Netacent needed stable leadership. McAllister and Watt agreed and sold their stock to him so that he could provide that leadership. Over 72 hours, Isaac took actions that would deprive Netacent of all of these benefits because he was threatened by the prospect Tahmisian had acquired 52% of Netacent stock in order to mange the company effectively. Rather than acknowledge he and Tahmisian had different visions for Netacent and pursue a court-supervised buy-out, Isaac caused Netacent to make claims against Tahmisian and use those claims and threats of litigation as leverage for concessions. It was a strategy that proved disastrous for Netacent.

Isaac's refusal to acknowledge the benefits of the SSO–Netacent relationship and Tahmisian's leadership resulted in a series of lost opportunities for both companies, including Hawaii, Kentucky, Arizona, and Georgia. Hawaii was initially lost because SSO and Netacent could not work together. Kentucky and Arizona were never opportunities because SSO and Netacent could not even agree on how to present proposals to the states. And, although Georgia awarded SSO a contract, the thought of SSO getting a "big check" was unbearable so Isaac

[297] The Court is aware that Netacent's articles attempt to limit the liability of directors. Ex. 2304-6 at Art. 8.

caused Netacent to protest the award and included demonstrably false statements in the protest, ultimately denying both companies the income that would have been received from Georgia.

These actions have caused both Netacent and Tahmisian significant harm. Tahmisian has been effectively locked out of the company since October 2021. Isaac's actions have resulted in significant liability and harm to Netacent. Indeed, Netacent's liability is hard to quantify but the unpaid wage claim neatly demonstrates how pettiness has increased Netacent's liability. If Isaac had objectively and in good faith considered Tahmisian's claim for unpaid wages, it would have represented a $1,000,000 liability. There was never a good faith basis to dispute Tahmisian's claim. Now Tahmisian has been awarded triple that, plus interest and attorneys' fees.

Tahmisian's damages for breach of fiduciary duty are difficult to quantify. In doing so this Court is cognizant of its equitable powers when the Idaho Business Corporation Act is insufficient. *McCann v. McCann*, 275 P.3d 824, 834 (Idaho 2012) ("If a district court finds a breach of fiduciary duty, and [dissolution] is not an adequate or available remedy, any alternative remedy . . . can be utilized"). While dissolution of Netacent would be a conceivable remedy, it would be illogical to simultaneously grant Tahmisian an interest in Netacent, award Tahmisian and SSO damages against Netacent, and then dissolve Netacent (an entity with likely few liquid assets). In this case, Isaac's blatant breaches of fiduciary duty have harmed Tahmisian, SSO, and Netacent. Accordingly, applying equitable principles, Isaac shall be jointly and severally liable with Netacent for all damages awarded.

8. Amended Complaint Claim 15 – Cyberpiracy

Tahmisian claims that the updated registration of "solidstateops.com" and the creation of the entity Solid State Ops LLC is cyberpiracy under 15 U.S.C. § 1125(d). The statute provides:

> (1)(A) A person shall be liable in a civil action by the owner of a mark, including a personal name which is protected as a mark under this section, if, without regard to the goods or services of the parties, that person—
>
> (i) has a bad faith intent to profit from that mark, including a personal name which is protected as a mark under this section; and
>
> (ii) registers, traffics in, or uses a domain name that--
>
> (I) in the case of a mark that is distinctive at the time of registration of the domain name, is identical or confusingly similar to that mark;
>
> (II) in the case of a famous mark that is famous at the time of registration of the domain name, is identical or confusingly similar to or dilutive of that mark; or
>
> (III) is a trademark, word, or name protected by reason of section 706 of Title 18 or section 220506 of Title 36.
>
> *****
>
> (D) A person shall be liable for using a domain name under subparagraph (A) only if that person is the domain name registrant or that registrant's authorized licensee.

The elements for a cyberpiracy claim under the Anticybersquatting Consumer Protection Act are: "a trademark owner must show the defendant (1) registered, trafficked in, or used a domain name, (2) that is confusingly similar to the plaintiff's trademark, and (3) had a bad faith intent to profit from that domain name." *CrossFit, Inc. v. Jenkins*, 69 F.Supp.3d 1088, 1097 (D. Colo. 2014) (citing *iYogi Holding Pvt. Ltd. v. Secure Remote Support, Inc.*, 2011 WL 6291793, at *16 (N.D. Cal. Oct. 25, 2011)).

While this Court finds that Isaac's act of transferring the registration and creating a separate LLC with a confusingly similar name out of "curiosity" are not good acts and were done in bad faith, it cannot find that Isaac violated the statute. While this conduct likely satisfies elements (1) and (2), Tahmisian produced no evidence at trial that Isaac intended to profit from the domain name. Having been unable to meet an essential element, this claim fails.

9. Amended Complaint Claim 16 – Interference with Prospective Business Advantage.

SSO argues that Netacent's actions relating to the GDOL bid resulted in the contract falling through and constituted interference, resulting in damages in the contract amount of $26,000,000. To maintain a successful claim for intentional interference with a prospective economic advantage, a plaintiff must show:

1. the existence of a valid economic expectancy;
2. knowledge of the expectancy on the part of the interferer;
3. intentional interference inducing termination of the expectancy;
4. the interference was wrongful by some measure beyond the fact of the interference itself; and
5. resulting damage to the plaintiff whose expectancy has been disrupted.

Trumble v. Farm Bureau Mut. Ins. Co., 456 P.3d 201, 220-21 (Idaho 2019). There is no dispute regarding the existence and knowledge of the expectancy by Netacent. The GDOL Sole Source Intent to Award clearly gave SSO a valid economic expectancy of $26,000,000. That document indicated that SSO would receive the contract absent an intervening event. Accordingly, elements one and two are satisfied. The remaining elements require closer scrutiny.

a. Netacent's interference was intentional and intended to induce termination

Netacent sought to block the contract by formally protesting the complaint. The protest was done solely to induce termination despite Netacent going to great lengths to explain otherwise at the trial. Netacent's motivation was made clear when Reuben Ortega was informed that GDOL was going write a big check to SSO and was asked to help. Netacent did not advise Ortega it was concerned about the integrity of the process. It was singularly focused on SSO receiving significant funds from GDOL. To prevent that from occurring, over 48 hours Netacent contrived a basis to protest the award. Next, it submitted its protest with misleading and false statements with the expectation that it would induce termination, or give it leverage to exact concessions from Tahmisian.

b. The interference by Netacent was wrongful because it was deceptive

The interference is wrongful where the interferer had an improper motive to harm the plaintiff or the means used by the interferer to cause injury to the prospective advantage were wrongful by reason of statute, regulation, recognized common law rule, or an established standard of a trade or profession. *Id.* at 221; *Yoakum v. Hartford Fire Ins. Co*., 129 Idaho 171, 923 P.2d 416, 423 (1996). Put another way, the Idaho Supreme Court has explained that to be actionable, the interference must be undertaken by the defendant for an improper purpose or by an improper means. *JB Constr., Inc. v. King (In re King),* 403 B.R. 86, 94 (Bankr. D. Idaho 2009) (citing *Highland Enter., Inc. v. Barker*, 133 Idaho 330, 986 P.2d 996,1004 (1999)). The mere pursuit of one's own business purposes is not sufficient to support an inference of an improper motive to harm the plaintiff. *Trumble,* 456 P.3d. at 221.

The testimony that Isaac, the architect of Data Station, wanted to bid on a project that explicitly wanted his competitor's product, iUS, was nothing short of incredible. Netacent was not pursuing its own business purposes when it filed the protest. Having observed each of the witnesses, Netacent's sole objective when filing the protest was to ensure that SSO did not win the contract, and the protest, including misleading and false statements, was the vehicle for realizing that goal.

Unlike the operative complaint that was referred to in the GDOL protest, Netacent's answer and counterclaim in this case explicitly includes allegations and a cause of action for misappropriation of trade secrets and copyright infringement against Tahmisian and SSO.[298] As one would expect when litigating the ownership of intellectual property, the counterclaim includes references to source code and makes explicit reference to Harbor 9. A comparison of Netacent's counterclaim in this case with the operative complaint filed with the state court dispels any fiction that the ownership of intellectual property was being litigated when Netacent filed its protest with the GDOL. The statements in the protest were misleading and false.

Netacent wanted to see SSO fail and interfering with the GDOL award was one way of ensuring that outcome. It was improper from beginning to end, despite the witness' careful preparation. Netacent had no intent to bid on the contract if the protest was successful. The testimony of Reuben Ortega, Jordan, and others was simply not believable when the protest is considered within the broader context of the conflict between Isaac, Tahmisian, SSO, and Netacent.

Indeed, just months earlier, Isaac had co-opted Tahmisian's personal and SSO's email, and registered a deliberately confusing Solid State website. He has caused Netacent to refuse to pay Tahmisian's back pay, despite having received his own back pay when Tahmisian was President. He caused Netacent to refuse to repay loans from Tahmisian's family, even though Tahmisian caused Netacent to repay the Barrett family loans when he was President. The notion that despite this acrimony, suddenly Netacent was acting to protect the integrity of the process mandates this Court turn a blind eye to the record. Netacent had no motive in intervening except to provide GDOL with inaccurate information that would cause SSO to lose the contract.

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[298] Doc. 20.

c. The damage SSO suffered when GDOL withdrew the award following Netacent's protest is apparent

Finally, the damage to SSO is apparent. It went from having a $26,000,000 contract to having no economic prospects. Immediately after the contract fell through, SSO laid off almost its entire workforce. Accordingly, this Court comfortably concludes that SSO was damaged in the full amount of its expected profits under the contract as a result of Netacent's interference. *See Pac. Nw. Bell Tel. Co. v. Rivers*, 398 P.2d 63, 67 (Idaho 1964) ("The measure of damages to a business is the loss of profits arising from a wrongful act"); *Snap! Mobile, Inc. v. Vertical Raise, LLC*, 544 P.3d 714, 731–32 (Idaho 2024). Accordingly, Netacent is liable to SSO for $4,940,000 for intentional interference with prospective economic advantage.[299]

10. Amended Complaint Claim 17 – Accounting

Tahmisian demands that the Netacent parties undertake an accounting to determine the sums due. Under Idaho Code §§ 30-29-1602(b) and 30-29-1604(a), a shareholder has the right to inspect and copy the financial statements and accounting records of the corporation and the Court can order the corporation to comply. However, in this case, having already determined that Tahmisian holds a 52% interest in Netacent, and considering the other relief and damages awarded Tahmisian, the Court will not order an accounting at this time.

11. Amended Complaint Claim 18 – Promissory Estoppel

SSO claims that Isaac and Netacent are subject to promissory estoppel for their failure to pay for hosting services for Netacent and ADOL during fiscal year 2021. SSO claims that Isaac and Netacent knew that SSO would suffer economic loss if they did not pay and that SSO relied on their promise when it continued to provide services.

Promissory estoppel requires the plaintiff to prove:

> (1) reliance upon a specific promise; (2) substantial economic loss to the promisee as a result of such reliance; (3) the loss to the promisee was or should have been foreseeable by the promisor; and (4) the promisee's reliance on the promise must have been reasonable.

SilverWing at Sandpoint, LLC v. Bonner Cnty., 435 P.3d 1106, 1115 (Idaho 2019) (quoting *Zollinger v. Carrol*, 49 P.3d 402, 404 (Idaho 2002)). Promissory estoppel is invoked when the promisor makes a promise that they should reasonably expect will cause the other party to act and the court must intervene to prevent injustice by enforcing the promise. *Id.*

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[299] Trial Tr. 4107:12–25. Tahmisian testified that SSO and Netacent maintained a 19% profit margin. Damages from this interference were calculated as $26,000,000 awarded under the contract x 19% = $4,940,000. Prejudgment interest pursuant to Idaho Code § 28-22-104(1) will be added to this amount and reflected in the accompanying Judgment.

A promise is a manifestation of both a present and future intention to do or refrain from doing something. *Hudson v. Cobbs*, 797 P.2d 1322, 1366 (Idaho 1990) (Bistline, J., dissenting) (quoting Keeton, *Prosser & Keeton on the Law of Torts* § 92 p. 656 (5th ed. 1984)) The party must reasonably believe the promise has been made when considering the surrounding circumstances. *Barton v. Bd. of Regents of Univ. of Idaho*, 550 P.3d 293, 304–05 (Idaho 2024) (affirming lower court's holding that no promise had been made to award a JD degree despite requirements having been met when the Honor Code stated that denial of the degree may occur for Honor Code violations). Manifestations of a promise must be judged by an objective interpretation that would allow the trier of fact to believe the parties agreed what constituted the promise. *Fed. Nat. Mortg. Ass'n v. Hafer*, 351 P.3d 622, 629–30 (Idaho 2015) (outlining principles of manifestation for purposes of contract formation).

SSO provided services to host and maintain Data Station with the expectation from Netacent that the companies would engage in a mutually supportive relationship. Netacent, Isaac, and the Board took no steps to disclaim this arrangement, and several Board members encouraged the symbiotic relationship. When that relationship ended and Netacent filed suit against SSO, SSO agreed on the record before another court that it would transition access to the Microsoft Azure portal back to Netacent in exchange for Isaac and his counsel's affirmative representations to that court that SSO would be paid for its services.

By any objective measure, statements made both under oath by a witness and by counsel with a duty of candor to that court and this one should not be freely disregarded or not enforced when the other party has relied upon those representations to their detriment. SSO agreed to transition hosting services that utilized Microsoft Azure portal back to Netacent in exchange for Isaac and counsels' affirmative representations that SSO would receive payment for the services it provided. The equivocal testimony Isaac provided to this Court to explain why Netacent later refused to act in a manner consistent with these prior representations to the state court was not believable.[300]

Accordingly, this Court finds that promissory estoppel applies and Netacent is bound to pay SSO for services it performed under the ADOL contract from the February 25, 2022 state court hearing going forward. While SSO may have had the expectation that it would be paid for both its past and future hosting services, either by ADOL or by Netacent, there was no specific promise in place upon which SSO could rely and which could form the basis for a promissory estoppel claim until an agreement was reached at the hearing. While SSO invoiced Netacent in the amount of $916,667 for the hosting services it provided to Netacent to maintain the ADOL contract,[301] this sum cannot be justified in the context of a promissory estoppel claim. Rather, SSO is entitled to be paid for its hosting services between February 25, 2022 and August 2022,

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[300] Isaac has apparently taken the position that because Tahmisian allegedly "stole" money from Netacent, then Netacent is endowed with carte blanche to disregard all obligations owed. Such thinking has turned out to be very costly.

[301] Ex. 3045. This invoice was for "[h]osting, devops, helpdesk, administrative, and transition services" for fiscal year 2022, October–August.

when it ceased to provide any hosting services for ADOL. The invoices for those dates total $227,171.47.[302]

12. Amended Complaint Claim 19 – Contribution/Indemnification

As a co-obligor on the loans Netacent received from Lynne Tahmisian ("Lynne") and Sharon Peck ("Peck"), Tahmisian seeks contribution or indemnification for the amounts that he was forced to repay under those loans. This Court notes that while loans from Tahmisian's family were left unpaid, Isaac's family was repaid by Tahmisian. However, when Isaac was in a position to cause Netacent to repay Tahmisian's family, he refused to do so, again illustrating disparate treatment.

"Contribution is a remedy deeply rooted in the principles of equity, fair play and justice." *Schmidt v. Huston*, 470 P.3d 1129, 1132 (Idaho 2016) (quoting *Masters v. State*, 668 P.2d 73, 76 (Idaho 1983)). It strikes this Court as inherently inequitable that following Tahmisian's summary dismissal, Isaac unilaterally determined that Netacent was not obligated to pay back the loans received from Tahmisian's family members—who had been the primary financial lifeline of Netacent to that point. Tahmisian as a co-obligor should not be obligated to pay the debts of Netacent simply because Isaac decided that those debts were no longer convenient. Accordingly, Tahmisian has the right to seek contribution from Netacent. Netacent is liable for the amounts Tahmisian has paid to Lynne and Peck.

The claims register shows an amended proof of claim was filed by Peck on June 12, 2026. Netacent was the borrower and, as acknowledged by McAllister and Watt, these loans were instrumental to Netacent getting to the ADOL "go live" date. Netacent shall be liable to Tahmisian in the amount of $716,870.57, with interest accruing on the unpaid principal balance from June 1, 2026.[303]

Lynne has also filed an amended proof of claim. It shows a total claim amount as of August 19, 2025, of $864,873.39, with interest accruing on the unpaid principal balance from August 19, 2025.

Netacent shall indemnify Tahmisian for any other amounts Peck or Lynne seek to recover from Tahmisian related to the Netacent loan, including attorneys' fees or costs.

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[302] Ex. 2303-77–83. The invoice for February 2022 totaled $58,278.58, which amounts to $2,081.38 per day. As the agreement was reached on February 25, only three days may be counted for the purposes of calculating damages. $2,081.38 x 3 = $6,244.14. Prejudgment interest pursuant to Idaho Code § 28-22-104(1) will be added to the total and is reflected in the accompanying Judgment.

[303] Interest shall accrue at the rate set forth in the proof of claim and calculated to $155.51 per diem.

B. Defendants' Counterclaims

As a preliminary matter, this Court notes that Netacent's case, specifically liability and damages, relies heavily on the expert testimony of Glenn Karlberg, particularly as it relates to damages. As discussed above, the record suggests Mr. Karlberg was presented with a carefully curated set of exhibits designed to ensure Mr. Karlberg's opinions would mirror or reinforce prior positions taken by Netacent and Isaac long before Mr. Karlberg was engaged.

Jordan was responsible for the audit, and according to his own testimony he was not even employed by Netacent for two years preceding the audit. He had no personal knowledge of the underlying events, except as retold to him by Isaac or other Netacent employees. It is difficult not to conclude that Mr. Karlberg's analysis and conclusions are tainted by these underpinnings.

An expert witness should not simply be a "parrot" for the positions of others, lending them credibility through their qualification as an expert. *Zakaria v. Gerber Prods. Co.*, 2017 WL 9512587, at *7 (C.D. Cal. Aug. 9, 2017) (citing *Matter of James Wilson Assoc.*, 965 F.2d 160, 172–73 (7th Cir. 1992) and *Cholakyan v. Mercedes-Benz, USA, LLC*, 281 F.R.D. 534, 544 (C.D. Cal 2012)). A qualified expert's testimony is only relevant if they knew of facts that would enable them to express a reasonable opinion. *Jones v. Otis Elevator Co.*, 861 F.2d 655, 662 (11th Cir. 1988).

The expert must rely on facts or data that would enable them to render an opinion, not the party's speculation merely regurgitated by a more accredited mouth. *Stephens v. Union Pac. R.R. Co.*, 935 F.3d 852, 856–57 (9th Cir. 2019) ("A party's own speculation is insufficient to create a genuine issue of material fact and a party cannot make it sufficient simply by finding an expert who is willing to assume its correctness"). In other words, this Court is free to disregard expert testimony when it is convinced that the testimony is a result of a compromised foundation.

This Court finds that Mr. Karlberg's testimony rested on insufficient footing and was not the result of conclusions drawn from independent opinions based on sufficient data or facts. Mr. Karlberg did not attend the hearing and had no opportunity to consider the fully developed record presented to this Court.[304] Indeed, a consistent refrain in his testimony was the paucity of evidence and facts that he was provided to conduct his analysis. To the extent Mr. Karlberg made findings that support Netacent's position, the Court affords such findings little weight, given the limited information he was provided.

In short, Mr. Karlberg's testimony was not reliable because it was premised on limited information carefully provided to him to yield an opinion that legitimized Jordan's audit and the

[304] The record includes 371 exhibits totaling over 4,000 pages that were admitted over the course of a 16-day trial which spanned approximately three months. The transcript from the proceeding is nearly 5,750 pages long, and, as told by the 19 witnesses who testified, chronicles the 10-year history of first Netacent and later SSO, and eventually the conflicts over several multimillion-dollar government contracts, company ownership, unpaid wages, and intellectual property, among other hotly contested issues.

cavalier conduct of Isaac and Netacent in the days, months, and years that followed October 28, 2021.

1. Counterclaims Claim 1 and 2 – Fraud

Netacent's pleadings are less than artful. The "fraud" count appears to be an amalgamation of allegations of false statements and non-disclosure of material facts that Tahmisian as Board member and president had a duty to disclose. For example:

- Netacent alleges that SSO and Tahmisian committed fraud by representing to ADOL that SSO was a parent company to Netacent, that SSO owned Data Station, and that Netacent would receive $8,000,000 from ADOL.

- Additionally, Tahmisian committed fraud by omission because he failed to disclose the existence of SSO, his intent to become majority shareholder, his intent for Netacent to incur debt to his family, and the disposition of the funds under the ADOL RFP.

Notably, the Court cannot discern a basis for finding Tahmisian liable for a fraud perpetrated on Netacent based on statements made to ADOL. Such a construction ignores the elements of fraud.

a. Fraud by Misrepresentation

In Idaho, fraud or misrepresentation consists of nine elements: (1) a representation; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) the speaker's intent that it should be acted on by the person and in the manner reasonably contemplated; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on the truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *Faw v. Greenwood*, 613 P.2d 1338, 1340 (Idaho 1980) (quoting *Mitchell v. Siqueiros*, 582 P.2d 1074, 1079 (Idaho 1978)); *Gemini Tech., Inc. v. Smith & Wesson Sales Co.,* 2026 WL 184561 at *7 (D. Idaho Jan. 23, 2026). "In a closely held corporation, the corporate directors owe a fiduciary duty to one another, to the corporation, and to the shareholders." *Mannos v. Moss*, 155 P.3d at 1172 (citing *McCann v. McCann,* 61 P.3d 585, 590 (2002)).

Netacent cannot have a claim for fraud if the statements were made by Tahmisian to ADOL, because elements 6–9 involve the "hearer." Statements by Tahmisian to ADOL, such as SSO is the parent company of Netacent and that SSO owned Data Station cannot serve as the basis for a fraud claim by Netacent. Fraud is a cause of action by the *listener* who lacks knowledge that the information is fraudulent, not a bystander that overhears or later learns of the false statement. Had Netacent filed an action under these allegations for tortious interference with a business relationship, interference with prospective economic advantage, or another similar tort, it may have alleged a cognizable claim involving the statements, but it did not do so. *See Nichols v. Kanaley*, 2017 WL 1057373 (Idaho Ct. App. Mar. 21, 2017) (outlining such causes of action).

b. Fraud by Omission

Turning to their fraudulent omission claims, Netacent largely argues that Tahmisian was acting under cover of silence to take advantage of Netacent in violation of his fiduciary duties. "Omission of information may constitute fraud when a duty to disclose exists." *Humphries v. Becker*, 366 P.3d 1088, 1096 (Idaho 2016) (compiling cases). The duty to disclose arises when: (1) there is a fiduciary or other similar relationship between the two parties; (2) disclosure prevents a partial statement of facts from being misleading; or (3) a fact known by one party and not the other that if the mistake were mutual the contract would be voidable, and the party knowing the fact knows the other does not know. *Id.* (citing *Sowards v. Rathbun*, 8 P.3d 1245, 1250 (Idaho 2000)). The court must determine whether the facts asserted give rise to a duty to disclose. *Printcraft Press, Inc. v. Sunnyside Park Util., Inc.*, 283 P.3d 757, 769 (Idaho 2012). If they do, then the factfinder must determine the veracity of those facts. *Id.*

Idaho's body of law on fraud by omission descends from a draft of the Restatement Second of Torts. *Bethlahmy v. Bechtel*, 415 P.2d 698, 702 (Idaho 1966). The Restatement states,

> One who fails to disclose to another a fact that he knows may justifiably induce the other to act or refrain from acting in a business transaction is subject to the same liability to the other as though he had represented the nonexistence of the matter that he has failed to disclose, if, but only if, he is under a duty to the other to exercise reasonable care to disclose the matter in question.

Rest. 2d Torts § 551(1) (1977). The Restatement's first duty is identical to Idaho's, placing a duty on fiduciaries when they are a party to a transaction to which their beneficiary is also a party. Rest. 2d Torts § 551(2)(a). Because failure to disclose operates as the affirmative representation of the nonexistence of a fact, it essentially resolves the first two elements of fraud—a representation and its falsity. However, the other seven elements must still be proven, including inducement, reliance, and damages.

Idaho imposes an active duty on directors requiring that "a director shall disclose . . . to the other board or committee members information not already known by them but known by the director to be material to the discharge of their decision-making or oversight functions." § 30-29-830(c). Accordingly, directors have an independent obligation to disclose information material to board decisions. Tahmisian had a duty to disclose SSO and SSO's prospective relationship with Netacent. He did so.

McAllister, Watt, and Isaac received an email from Tahmisian disclosing SSO's existence and how he anticipated the two companies would work together and independently, as appropriate. Collectively, McAllister, Watt, Isaac, and Tahmisian comprised a majority of the Board of directors. To allege and claim that Tahmisian failed to disclose SSO's existence is patently false and undermines the Netacent parties' credibility.

The next claim is that Tahmisian failed to disclose his intentions to acquire a controlling interest in Netacent. This specifically refers to the Watt and McAllister transactions. The initial email included Watt, McAllister, and Jordan. The only omitted party was Isaac. As a result, a majority of directors and shareholders, (Watt, McAllister, Jordan and Tahmisian) knew Tahmisian had genuine concerns about Netacent's management struggles. He proposed a solution: acquisition of other shareholders' shares. While based in facts and circumstances, "knowledge of individuals at a certain level of responsibility must be deemed the privity and knowledge of the organization, or else it could always limit its liability." 19 *C.J.S. Corporations* § 715 (2026).

Isaac was excluded because the other directors recognized his response would likely be extreme. His reaction when he did learn of the transactions and the damage to Netacent that has followed, shows the fear was well-founded. The Netacent parties, including Isaac, have presented neither fact nor law tending to establish Tahmisian had a duty to disclose to Isaac his efforts to acquire 52% of Netacent stock. If immediately following the acquisition he had misused his majority interest, sought to "freeze out" Isaac, or acted in a manner that was detrimental to Netacent, the analysis may be different. Instead, the record shows he capably managed Netacent. Netacent and its shareholders benefitted from Tahmisian's leadership.

Netacent next alleges Tahmisian's failure to disclose the loans received from his family was an omission that supports its fraud claim. First, the record does not establish he failed to disclose the source of Netacent's funding. In various emails McAllister and Watt acknowledged the contributions and sacrifices of Tahmisian's family. The record shows that the loans were both adequately disclosed and integral to Netacent's success and ability to get the ADOL project completed. Even if Netacent proved the loans were not disclosed, Netacent was not damaged by them. To the contrary, the loans ensured its success and permitted the company to be poised for additional success prior to October 28, 2021.

Finally, Netacent claims that Tahmisian "failed to disclose his intentions for the allocation of the $8,000,000 Netacent was to receive from the ADOL contract." First, this does not appear to have a strong factual basis because there is significant evidence in the record demonstrating that Tahmisian and Isaac exchanged messages on this very point. While the messages were not as clear as one would like and remained subject to many intervening events, Isaac and others were apprised of the ADOL payments and knew that some combination of Netacent and SSO had performed or would perform work for ADOL, consistent with the maintenance versus development dichotomy. Tahmisian disclosed this proposal early; no one substantively objected, formally or otherwise.

This Court is "under no obligation to take factual claims made by the parties and fashion them into legal arguments." *Smith v. Marsh*, 194 F.3d 1045, 1052 n. 5 (9th Cir. 1999) (quoting *Ent. Rsch. Grp., Inc. v. Genesis Creative Grp., Inc.*, 122 F.3d 1211, 1217 (9th Cir. 1997) ("Judges are not like pigs, hunting for truffles buried in briefs")). Having failed to articulate a cognizable claim for fraud either by representation or omission, Netacent is not entitled to any recovery. Accordingly, the Netacent parties' clumsy application of the law and dearth of evidence to substantiate their allegations render all alleged counts of fraud meritless.

2. Counterclaim Claim 3 – Unjust Enrichment

Netacent claims that Tahmisian and SSO were unjustly enriched by their participation in the ADOL contract because they retained funds and gained valuable contracts with state actors. Netacent requests that Tahmisian and SSO be forced to turn over the money received from ADOL because the work SSO did was not commensurate with the funds it received. Unjust enrichment is based on equitable principles that imply a contract between the parties when there is no express agreement between them, but their conduct evidences an agreement. *Roost Project, LLC v. Andersen Constr. Co*., 437 F. Supp. 3d 808, 823–24 (D. Idaho 2020) (citing *Barry v. Pac. W. Const., Inc.*, 103 P.3d 440, 447 (Idaho 2004)).

"To establish a claim for unjust enrichment under Idaho law a plaintiff must prove: (1) a benefit is conferred on the defendant by the plaintiff; (2) the defendant appreciates the benefit; and (3) it would be inequitable for the defendant to accept the benefit without payment of the value of the benefit." *Id*. (quoting *Nelson-Ricks Cheese Co., Inc. v. Lakeview Cheese Co., LLC*, 331 F.Supp.3d 1131, 1145 (D. Idaho 2018) (citing *Countrywide Home Loans, Inc. v. Sheets*, 371 P.3d 322, 326 (Idaho 2016); *Med. Recovery*, 336 P.3d at 805)). Netacent failed to introduce evidence that would permit the Court to determine how the proceeds of the ADOL payables should be allocated based on Netacent and SSO's respective contributions.

This Court concurs with Netacent that it conferred benefits on SSO in the form of staff, access to state contacts and contracts. However, this relationship was not inequitable—it was largely synergistic until personality conflicts between Isaac and Tahmisian caused Netacent to sabotage the relationship. The record shows SSO was not a parasitic entity. According to McAllister, SSO was the only thing keeping Netacent afloat throughout 2021. Tahmisian's failure to adhere to formalities and maintain strict distinctions between Netacent and SSO was certainly not indicative of "best practices," and frankly he ought to have been more proactive, but Netacent has not shown it was damaged.

The measure of damages in an unjust enrichment claim is the value of the benefit bestowed upon the defendant which, in equity, it would be unjust for the defendant to retain without recompense to the plaintiff. *Pickering v. Sanchez*, 544 P.3d 135, 146 (Idaho 2024); *In re All Terrain, LLC*, 625 B.R. 462, 486 (Bankr. D. Idaho 2020). To prevail under the circumstances in this case, Netacent needed to show both the value of the benefits it allegedly conferred on SSO, along with any corresponding benefits SSO conferred on it, so that the Court could equitably balance the scales. It did not do so. According to McAllister, Netacent was the net winner of the relationship prior to October 2021. As a result, Netacent failed to establish SSO was unjustly enriched.

3. Counterclaim Claim 4 – Breach of Fiduciary Duty

Netacent's claims for breach of fiduciary duty against Tahmisian stems from the formation of SSO and loans from his family. As discussed above, the loans from his family were integral to Netacent's ongoing existence as it worked to complete the ADOL project and "go live." Further, Netacent argues that Tahmisian formed SSO to compete against Netacent and usurp its business opportunities. Although Isaac jumped to this conclusion within the first 48 hours of discovering Tahmisian acquired Watt's stock, SSO was formed to work with rather than compete against Netacent.

A fiduciary of a business must generally present a business opportunity to the business first but may take advantage of an opportunity after seeking board or shareholder approval pursuant to the statutory process. Idaho Code § 30-29-870(a)(1). A director is only required to present an opportunity if the opportunity is one "which the corporation is financially able to undertake, is, from its nature, in the line of the corporation's business and is of practical advantage to it, is one in which the corporation has an interest or a reasonable expectancy, and, by embracing the opportunity, the self-interest of the officer or director will be brought into conflict with that of his corporation." *Jenkins v. Jenkins*, 64 P.3d 953, 957 (Idaho 2003) (quoting *Melgard v. Moscow Idaho Seed Co.*, 251 P.2d 546, 550 (Idaho 1952)).

While Idaho case law has not determined whether inaction by a board of directors after presentation of a business opportunity represents disclaimer of the corporation's interest, other courts have found that when a director discloses their intention to pursue an opportunity and the board does not object, the corporation has ratified the usurpation. *See Ackerman v. 305 E. 40th Owners Corp.*, 189 A.D.2d 665, 666–67 (N.Y. App. Div. 1993) ("Silence constitutes an estoppel where there is a duty to speak"); *Forkin v. Cole*, 548 N.E.2d 795, 808 (Ill. Ct. App. 1989). Idaho has previously held that when a corporation receives and retains benefits from an unauthorized transaction, "such conduct amounts to a ratification." *Portland Cattle Loan Co v. Hanse Livestock & Feeding Co.*, 251 P. 1051, 1052 (Idaho 1926) (quoting *Pettengill v. Blackman*, 164 P. 358, 363 (Idaho 1917)); *Weatherby,* 492 P.2d at 47 n.15. Accordingly, failure to object may constitute disclaimer of a corporation's interest.

Much of this conflict stems from disagreements between Isaac and Tahmisian over the scope of Netacent's line of business. Ironically, Isaac wanted to keep that line of business focused and narrow. In response, Tahmisian created SSO and informed the Netacent Board that it would be handling collateral matters, including maintenance, freeing Netacent to focus exclusively on development and grow at a pace more in line with Isaac's preferences. It was met with approval by McAllister and silence by the rest. Given the limited scope of Netacent's business—software development—Tahmisian was not required to consult with the Board regarding the call center.

The characterization of SSO as a general contractor and Netacent as a subcontractor was in furtherance of the synergistic intent of the formation of SSO, as outlined by Tahmisian's disclosure. Whether this characterization was a fair representation of the parties' relationship was ultimately subject to Board oversight. The Board chose, through consent or neglect, not to exercise such oversight to object to this characterization until it became personally convenient for Isaac to do so.

The argument now that Netacent and Isaac would have supported a call center or were positioned to operate one is nothing short of fiction. The record is devoid of any credible indicia that Isaac or anyone else wanted Netacent to operate a call center. Although disclosure of the call center and approval may have been the better course in hindsight, the call center was no secret and at no time did Isaac, another Board member, or shareholders object. Indeed, Netacent likely did not object because it was both very busy with Data Station updates required by Covid and was dependent on the call center revenue. The record supports finding and concluding that SSO's call center was ratified by the Board. It did not object to it in real time and retained the benefits of SSO's call center revenue.

Tahmisian's characterization of SSO as the general contractor and Netacent as the subcontractor was seemingly consistent with his marketing efforts. The idea was to have SSO manage the administration of contracts while Netacent handled Data Station maintenance and improvements. While this is a closer call, and likely should have been disclosed to the Board, this characterization of the roles while marketing Netacent did not injure Netacent. Instead, any injury suffered by Netacent was attributable to the underlying shareholder dispute that resulted in Netacent and SSO being incapable of working together, not whether one entity was a general or subcontractor.

Tahmisian's platform had the potential to compete with Netacent, but that potential was never realized because on the one occasion it could have been utilized, Netacent protested the sole source award by GDOL and SSO lost the opportunity. This lost opportunity for SSO also damaged Netacent because SSO was prepared to work with Netacent in a joint capacity. Netacent would have benefitted from participating in a joint venture with SSO because GDOL did not want to be solely dependent on Netacent for ongoing service and support. It was an opportunity for Netacent to generate revenue it desperately needed and from a source otherwise inaccessible to it.

Finally, Netacent presented extensive testimony regarding the long hours its programmers worked and Isaac's intimate involvement in software development. Although Tahmisian and others were also talented and competent programmers, McAllister observed early on that Isaac was very gifted but needed to be praised for his work. Along with praise, Isaac closely supervised the work of other programmers, creating bottlenecks that limited Netacent's ability to take on other work and projects. Netacent did not have the independent ability to develop other revenue streams or products because that was not what Isaac wanted. Isaac was content with his approach, preferring to focus on one project at a time in exchange for exercising complete control over the software development process.

The Court concludes Tahmisian is not liable for breach of fiduciary duty.

4. Counterclaim Claim 5 – Misappropriation of Trade Secrets

Netacent claims that Tahmisian and SSO misappropriated trade secrets by using staff knowledge and Data Station when creating Harbor 9. The Idaho Trade Secret Act ("ITSA") defines a trade secret as:

> information, including a formula, pattern, compilation, program, computer program, device, method, technique, or process, that:
>
> > (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper

> means by, other persons who can obtain economic value from its disclosure or use; and
> (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy….

Idaho Code § 48-801(5). Based upon this definition, the Court concludes Data Station is Netacent's trade secret. It was developed at Netacent by its employees and Netacent maintained the secrecy of the Data Station source code by keeping it secure. The code was not generally known and was valuable to Data Station and the services that Netacent provides.

Once the existence of a trade secret has been established, under the ITSA Netacent must prove that Tahmisian and/or SSO misappropriated the trade secret. *Trumble*, 456 P.3d at 217 (citing Idaho Code § 48-801). The ITSA defines misappropriation as:

> (a) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
> (b) Disclosure or use of a trade secret of another without express or implied consent by a person who:
> > (A) Used improper means to acquire knowledge of the trade secret; or
> > (B) At the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:
> > > (i) Derived from or through a person who had utilized improper means to acquire it;
> > > (ii) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
> > > (iii) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or
> >
> > (C) Before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

Idaho Code § 48-801(2). In this context, "improper means" include "theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy. . . ." *Trumble*, 456 P.3d at 218 (quoting Idaho Code § 48-801(1)).

To show misappropriation, the plaintiff must show that the trade secret exists. *Wesco v. Autobody Supply, Inc. v. Ernest*, 243 P.3d 1069, 1085 (Idaho 2010). Part of the process of demonstrating that the trade secret exists is demonstrating that the secret is not "readily ascertainable." *Basic Am., Inc. v. Shatila*, 992 P.2d 175, 184 (Idaho 1999). This requires the court to review the secret and determine whether the information is available in public materials. *Id.* For purposes of programming code, the Court of Appeals for the Ninth Circuit has held that the plaintiff must at least "identif[y] specific key aspects of its source code that it claims [defendant] misappropriated." *Integral Develop. Co. v. Tolat*, 675 Fed. Appx. 700, 703 (9th Cir. 2017).

As noted above, the Data Station source code is not in the record. As such, Netacent fails to state any specific trade secrets that were utilized beyond access to a "Platform Vision Document" road map and the use of Netacent employees in the creation of Harbor 9. Absent clear identification of its trade secrets and without the source code in the record, it is impossible to determine that Tahmisian and SSO misappropriated trade secrets.

Tahmisian and SSO are not liable for misappropriation of trade secrets.

5. Counterclaim Claim 6 – Copyright infringement

Based largely on the same rationale as misappropriation, Netacent argues that Tahmisian and SSO infringed on its copyright in the creation of Harbor 9.

Copyright protects an original work of authorship fixed in a tangible medium of expression, which can be perceived, reproduced, or otherwise communicated. 17 U.S.C. §102(a). Copyright does not protect "any idea, procedure, process, system, method of operation, concept, principle, or discovery . . . ." *Id.* at § 102(b). Among protected works are "computer program[s]" which are "a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result." *Id.* at § 101. Computer programs are uniquely difficult to apply copyright protections to because of their functional nature. As the Ninth Circuit Court of Appeals commented,

> [C]omputer programs are, in essence, utilitarian articles—articles that accomplish tasks. As such, they contain many logical, structural, and visual display elements that are dictated by the function to be performed, by considerations of efficiency, or by external factors such as compatibility requirements and industry demands …. In some circumstances, even the exact set of commands used by the programmer is deemed functional rather than creative for purposes of copyright.

Sega Enters. Ltd. v. Accolade, Inc., 977 F.2d 1510, 1524 (9th Cir. 1992) (citing *Comput. Assoc. Intern., Inc. v. Altai*, 982 F.2d 693, 704 (2d Cir. 1992)). Copyright law in the Ninth Circuit refers to both object code and source code. *Sony Comp. Ent., Inc. v. Connectix Corp.*, 203 F.3d 596, 600 n.2–3 (9th Cir. 2000) (source code being code readable by engineers and object code being readable by computers). Because object code is impossible to read without translation, "intermediate copying could constitute copyright infringement even when the end product did not itself contain copyrighted material. *Id.* at 602-03 (citing *Sega Enters. Ltd.,* 977 F.2d at 1518–19. But this copying nonetheless could be protected as a fair use if it was "necessary" to gain access to the functional elements of the software itself. *Id.*

Anyone who violates a right provided by 17 U.S.C. §§ 106–122 may be liable for infringement. *Id.* at § 501(a). Infringement may be direct or indirect; however, only direct infringement is at issue here. To show direct infringement, the plaintiff must show ownership of the materials and that the defendant violated "at least one exclusive right." *VHT, Inc. v. Zillow Grp., Inc.*, 918 F.3d 723, 731 (9th Cir. 2019). The plaintiff must also show causation, known as "volitional-conduct," which may be an issue where automated systems are involved. *Id.*

Direct infringement may be shown by demonstrating that the infringer had access to the work and that the works are substantially similar in their protected elements. *Cavalier v. Random House, Inc.*, 297 F.3d 815, 822 (9th Cir. 2002) (citing *Shaw v. Lindheim*, 919 F.2d 1353, 1356 (9th Cir. 1990)). The substantially similar requirement can be shown by the extrinsic (objective comparison) or the intrinsic ("ordinary, reasonable audience") test. *Cavalier*, 297 F.3d at 822. In essence, either the works are substantially similar or an audience would perceive them to be. This only applies to the protectable elements of the copyright. *Id.* at 823.

Some uses of copyrighted material are protected, such as fair use. See 17 U.S.C. §§ 107–12; 117; 119; 121–22. Typically, Courts do not dwell on whether the defendant violated the copyright, but instead whether the use was fair. See *Google LLC v. Oracle Am., Inc.*, 593 U.S. 1, 23–24 (2021). Questions of fair use under § 107 requires consideration of the: (1) purpose and character of the use; (2) nature of the copyrighted work; (3) amount and substantiality of the portion used; and (4) effect upon the potential market. *Id.* at § 107; *Google*, 593 U.S. at 18–19. Fair use involves mixed questions of law and fact and demands a case-by-case analysis. *Harper & Row Publishers, Inc. v. Nation Enter.*, 471 U.S. 539, 560 (1985).

As noted above, Netacent has not introduced the Data Station source code into the record nor identified specific aspects of the code that it claims SSO and Tahmisian have infringed. The record lacks both evidence and specific allegations to support their claims. Netacent's allegations are bare and largely devoid of fact. Moreover, neither Data Station's code nor Harbor 9's code are in the record because Netacent failed to timely disclose the relevant material, or otherwise comply with the rules of discovery, making it nearly impossible for this Court to determine the amount and nature of use.

However, it is clear that Netacent and SSO perform different functions and, in fact, were intended to increase each other's potential market share. Therefore, at least one factor would weigh against a finding of infringement. Accordingly, this Court cannot find that Tahmisian and SSO are liable for copyright infringement.

6. Counterclaims Claim 7 – Tortious Interference

Netacent alleges that Tahmisian and SSO's representations that SSO was the parent company of Netacent caused it to lose business with several state agencies, including Georgia and Hawaii. This Court outlined the requirements for tortious interference above, and this claim is facially deficient. First, Netacent's only involvement with the GDOL contract was to disrupt the contract for SSO; it never had any prospect, or even interest, in fulfilling the contract as sought by GDOL. Next, Netacent never showed that the loss of any contract was due to SSO claiming to be the parent company. Rather, the record is replete with evidence that Isaac and Tahmisian's personality clashes, combined with this litigation, resulted in the loss of various contracts. Similarly, Hawaii initially terminated the SSO contract because SSO and Netacent could not work together. Netacent is now working for Hawaii, thus undermining any claim of lasting harm from the characterization of SSO as the "parent."

Unlike SSO's GDOL contract, Netacent has not demonstrated even the first element of tortious interference, that there was a valid economic expectancy. Netacent never submitted a bid for GDOL (and actively refused the opportunity to do so), and had only submitted bids for Kentucky, Arizona, and other states. The mere submission of a bid is not a valid economic expectancy. *Trumble,* 456 P.3d at 220-21. Unlike ADOL, Hawaii, and GDOL which awarded contracts, Kentucky and Arizona never awarded contracts. As a result, there was no expectancy associated with those states.

Karlberg's analysis of the ADOL issues explicitly relies on Netacent's own audit.[305] As noted above, the Court ultimately concluded his opinion was entitled to little weight because it was overly deferential to the audit Jordan completed. Jordan was not employed at Netacent during the two years that preceded his audit, did not negotiate the agreements with ADOL, and had no knowledge of the milestones or division of work between SSO and Netacent that would permit Jordan to reach a defensible conclusion on which entity was entitled to specific funds and which entity was not. SSO did not interfere with ADOL in an impermissible manner. Even if it had, Netacent has not established by a preponderance of the evidence that it was damaged.

While Netacent had an expectancy regarding Hawaii, so did SSO. They were mutually responsible for the loss of the contract. Even if this Court were to assign blame to SSO, Netacent has failed to demonstrate that SSO operated with an improper motive. *Id.* SSO simply had no reason to cause the loss of a lucrative contract, and Netacent has produced no evidence that SSO acted with improper motive when Isaac and Tahmisian's management conflicts demonstrated to Hawaii they were unreliable partners. To find otherwise would allow damages by one party against another whenever joint ventures fail.

Where Isaac caused Netacent to sabotage SSO's GDOL contract for no advantage, the issues raised by the Netacent parties are those that occur every day in business. Shareholders fight, prospective clients solicit bids, and marketing efforts do not pan out. Netacent has not introduced evidence that establishes Tahmisian and SSO intentionally interfered with any expectancy or that such interference was wrongful. While it is convenient for Isaac to blame these failures on his ousted co-founder, it is not reflective of reality and does not satisfy the elements of a claim. Accordingly, Tahmisian and SSO are not liable under this claim.

C. Dischargeability under §§ 523(a)(2), (a)(4), and (a)(6)

To satisfactorily prove that a claim should be excepted from discharge, the creditor must demonstrate that the claim fits within an exception under the preponderance-of-the-evidence standard. *Grogan v. Garner*, 498 U.S. 279, 291 (1991). Exceptions to discharge should be strictly construed against the creditor. *Snoke v. Riso (In re Riso)*, 978 F.2d 1151, 1154 (9th Cir. 1992).

1. § 523(a)(2)

Netacent alleges that debts Tahmisian owes to it are nondischargeable under § 523(a)(2) because he "made false representations to Netacent and committed actual fraud against Netacent" by trying to gain majority ownership, forming a separate company, claiming

[305] Ex. 2279 at fn.3.

ownership of Data Station, transferring money from Netacent's accounts, describing Netacent as a subcontractor, and altering financial banking instructions under the ADOL contract.

A discharge does not discharge an individual debtor from a debt "for money, property, services, or an extension or renewal, or refinancing of credit, to the extent obtained by—false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition." § 523(a)(2)(A). To satisfy these requirements, a creditor must prove by the preponderance of the evidence:

> (1) that the debtor made a representation;
> (2) the debtor knew at the time the representation was false;
> (3) the debtor made the representation with the intention and purpose of deceiving the creditor;
> (4) the creditor relied on the representation; and
> (5) the creditor sustained damage as the proximate result of the representation.

Tallant v. Kaufman (In re Tallant), 218 B.R. 58, 64 (BAP 9th Cir. 1998) (quoting *Apte v. Japra (In re Apte)*, 96 F.3 1319, 1322 (9th Cir. 1996)). In considering reliance, the court should consider the relationship between the parties. *Tallant*, 218 B.R. at 67 (citing *Eugene Parks Law Corp. v. Kirsh (In re Kirsh)*, 973 F.2d 1454, 1458 (9th Cir. 1992)). The exception to discharge should be construed against creditors but should not allow the debtor to retain benefits incurred for fraud. *Ghomeshi v. Sabban (In re Sabban)*, 600 F.3d 1219, 1222–23 (9th Cir. 2010).

The actions of the debtor must have resulted in the loss of property to the creditor. 4 *Collier on Bankruptcy*, ¶ 523.08(1)(a) (16th ed. 2025). The U.S. Supreme Court has held that fraud does not need to be related to a credit transaction. *Husky Intern. Elec. v. Ritz*, 578 U.S. 355, 365–66 (2016). "Fraudulent intent may be established by circumstantial evidence, or by inferences drawn from a course of conduct." *McCrary v. Barrack (In re Barrack)*, 217 B.R. 598, 607 (BAP 9th Cir. 1998) (quoting *Devers v. Bank of Sheridan, MT (In re Devers)*, 759 F.2d 751, 753–54 (9th Cir. 1985)).

From the outset, Netacent has failed to satisfy even the basic pleading standards of § 523(a)(2). None of Netacent's papers allege that Tahmisian made a representation *to Netacent*, let alone that Netacent relied on such representation. As discussed above, Netacent has not met its burden to show that Tahmisian is liable for fraud under state law. Because Netacent has not shown that Tahmisian made any representations to Netacent or satisfied the subsequent elements, even were liability established, it would not be excepted from discharge under § 523(a)(2).

2. § 523(a)(4)

On this count, Netacent alleges only that "[Tahmisian] stole Netacent's property, and thereby committed embezzlement and larceny." A discharge does not discharge an individual debtor from a debt, "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." § 523(a)(4). This provision frequently overlaps with willful and malicious injury. *Husky*, 578 U.S. at 363.

In considering larceny under § 523(a)(4), the court must look to its definition under federal common law, which is the "felonious taking of another's personal property with intent to convert it or deprive the owner of the same.'" *Ormsby v. First Am. Title Co. of Nev. (In re Ormsby)*, 591 F.3d 1199, 1205 (9th Cir. 2010) (quoting 4 *Collier on Bankruptcy*, ¶ 523.10(2) (15th ed. 2008)). Felonious means "proceeding from an evil heart or purpose; malicious; villainous . . . . wrongful; (of an act) done without excuse of color of right." *Peltier v. Van Loo Fiduciary Servs. (In re Peltier)*, 643 B.R. 349, 360 (BAP 9th Cir. 2022) (quoting *Ormsby*, 591 F.3d at 1205 n.4). The Bankruptcy Code's definition of larceny does not depend on state law corollaries and is time-limited to the initial taking—not the subsequent wrongful withholding of property. *Jenkins v. Mitelhaus (In re Jenkins)*, 2015 WL 735799, at *5 (BAP 9th Cir. Feb. 20, 2015).

Again, Netacent's pleadings are bare on this count. As discussed above, this Court has determined that Tahmisian is not liable for converting Netacent's property, let alone that such acts were tantamount to fraud. Accordingly, this Court finds such debts would be dischargeable under § 523(a)(4).

3. § 523(a)(6)

Netacent repeats its allegations from § 523(a)(2) under this provision, alleging that Tahmisian's acts were willful and malicious. A discharge does not discharge an individual debtor from a debt, "for willful and malicious injury by the debtor to another entity or to the property of another entity." § 523(a)(6). In the Ninth Circuit, "'[a]n intentional breach of contract is excepted from discharge under § 523(a)(6) only when it is accompanied by malicious and willful tortious conduct.'" *Petralia v. Jercich (In re Jercich)*, 238 F.3d 1202, 1205 (9th Cir. 2001) (quoting *Riso*, 978 F.2d at 1154). To prove willful and malicious injury, the creditor must show that the debtor acted to willfully or maliciously *inflict the injury*. *Jercich*, 238 F.3d at 1207 (citing *Kawaauhau v. Geiger*, 523 U.S. 57, 64 (1998)).

The Court of Appeals for the Ninth Circuit has held, "the willful injury requirement of § 523(a)(6) is met when it is shown either that the debtor had a subjective motive to inflict the injury or that the debtor believed that injury was substantially certain to occur as a result of his conduct." *Jercich*, 238 F.3d at 1208 (emphasis omitted). Similarly, a malicious injury requires "(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse." *Jercich*, 238 F.3d at 1209 (quoting *Murray v. Bammer (In re Bammer*), 131 F.3d 788, 791 (9th Cir. 1997)).

The willful standard under § 523(a)(6) "focuses on the debtor's state of mind and precludes application of § 523(a)(6)'s nondischargeability provision short of the debtor's actual knowledge that harm to the creditor was substantially certain." *Thiara v. Spycher Brothers (In re Thiara)*, 285 B.R. 420, 432 (BAP 9th Cir. 2002) (quoting *Carrillo v. Su (In re Su)*, 290 F.3d 1140, 1146 (9th Cir. 2002)). "[M]alice may be inferred from the wrongful nature of the act." *Thiara*, 285 B.R. at 434 (quoting *Transamerica Com. Fin. Corp. v. Littleton (In re Littleton)*, 942 F.2d 551, 554 (9th Cir. 1991)). The willful and malicious requirement is an exceedingly difficult standard to satisfy. *See Plyam v. Precision Develop. (In re Plyam)*, 530 B.R. 456 (BAP 9th Cir. 2015) (compiling cases and analyzing numerous other standards that do not meet the requirements of this standard, including conscious disregard, reckless, despicable conduct, and oppression).

As with its other pleadings for nondischargeability, Netacent's claims are essentially bare assertions without an examination of the evidence. Based on the analysis above, Netacent does not come close to meeting the standard for showing that Tahmisian has acted willfully and maliciously, even if it had been able to prove liability. Even if he was incorrect, the evidence produced at trial demonstrated that Tahmisian believed he owned a controlling share of Netacent and that his actions were for Netacent's benefit. Accordingly, even if liability had been demonstrated, it would not be excepted from discharge under § 523(a)(6).

D. Claim Objection

Tahmisian objects to Claim No. 9 filed by Netacent in his bankruptcy case and requests that this Court determine the validity of the claim and ultimately deny it. A claim is deemed allowed unless a party in interest objects. § 502(a). After objection, a claim is allowed except to the extent "such claim is unenforceable against the debtor . . . under any . . . applicable law . . . ." § 502(b)(1).

"Upon the filing of an objection, the objecting party 'must produce evidence tending to defeat the claim that is of a probative force equal to that of the creditor's proof of claim.'" *Ashford v. Consol. Pioneer Mortg. (In re Consol. Pioneer Mortg.)*, 178 B.R. 222, 226 (BAP 9th Cir. 1995) (quoting *Simmons v. J.T. Savell (In re Simmons)*, 765 F.2d 547, 552 (5th Cir. 1985)). "The grounds for disallowance that may be asserted in support of a § 502(b)(1) claim objection include those defenses that would be available to the debtor under state law." *Mesa Pines Homeowner's Assoc. v. Paterno (In re Paterno)*, 2015 WL 735919, at *3 (BAP 9th Cir. Feb. 20, 2015) (citing *Durkin v. Benedor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1281 (9th Cir. 2000)). This includes affirmative defenses, a right of setoff, and counterclaims. *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas and Elec. Co.*, 549 U.S. 443, 450 (2007) (restating the principal that the bankruptcy court is generally required to adjudicate the validity of a claim under state law).

As addressed above, Netacent has failed to prove the validity of its claims for damages and, in fact, is significantly liable to Tahmisian and SSO for Isaac, Watt, and Jordan's ill-advised and uninformed actions following the discovery of the Watt PSA. Having found that their claims have no merit under state law, this Court determines that the claim is unenforceable and should be disallowed. Accordingly, Claim 9 is disallowed pursuant to § 502(b)(1).

VI. Relief and Damages

A. Tahmisian

The relief requested by Tahmisian includes a mixture of declaratory, monetary, and equitable relief. Given the breadth of the claims, some claims overlap or would result in contradictory relief. The measure of damages for the different claims and relief are outlined below.

1. Declaratory relief

For the reasons *supra* and this Court's order granting partial summary judgment (Doc. 143), the Watt PSA and the McAllister PSA are valid and binding. Tahmisian owned 52% of the outstanding stock in Netacent as of October 28, 2021.

- Any shareholder action requiring a quorum that Tahmisian did not participate in personally or by proxy after October 28, 2021, was invalid because a quorum did not exist.

- Any action by the Board after October 28, 2021, without three of the five directors was invalid.

However, this relief is merely declaratory at this juncture given the choice Defendants face below. Should the Defendants choose to pay Tahmisian the value of his 52% ownership in Netacent and purchase the shares, they could move to ratify these defective actions. *See* Idaho Code §§ 30-29-146 and 30-29-147. Accordingly, while invalid, these actions remain in effect pending such a determination.

2. Monetary Damages

a. Conversion of Stock

The proper measure of damages for conversion is the value of its use during the detention period and the costs of recovery. *Peasley Transfer & Storage Co. v. Smith*, 979 P.2d 605, 615–16 (Idaho 1998). In considering stocks, the Idaho Supreme Court has adopted the "highest intermediate value" approach to valuing property. *Averill Mach. Co. v. Vollmer-Clearwater Co.*, 166 P. 253, 253 (Idaho 1917). Where damages are reasonably certain, damages may also include a calculation of prejudgment interest. *Davis v. Prof. Bus. Servs., Inc.*, 712 P.2d 511, 516 n. 2 (Idaho 1985). Accordingly, Tahmisian is entitled to an award equal to the value of all dividends to which he would have been entitled during period beginning October 28, 2021, through entry of Judgment.

b. Unpaid Wages

For the reasons outlined *supra*, this Court finds that Netacent owes Tahmisian $1,076,460.46 in unpaid wages and interest and that such amount should be tripled under Idaho's Wage Claim Act. Accordingly, the total amount awarded in unpaid wages is $3,229,381.92.

c. Conversion – Domain Name

As this Court explained above, Isaac and Netacent wrongfully converted the tahmisian.com domain name. However, Tahmisian has suffered no actual damages or alternatively failed to introduce evidence of the damages attributable to this wrongful conversion. *Peasley*, 979 P.2d 615. Accordingly, this Court will only award nominal damages. Isaac and Netacent shall pay Tahmisian $1.00.

This Court has determined that Tahmisian is the owner of tahmisian.com, that Isaac and Netacent have no interest or right in the property and shall immediately turn over control of the domain to Tahmisian.

3. Equitable Remedies

As discussed above, Isaac breached his fiduciary duties while pursuing his rival, causing damage to Netacent and, by extension, Tahmisian as shareholder. As no statutory remedy can adequately address his breach of fiduciary duty, this Court must fashion an equitable remedy. Isaac shall be jointly and severally liable with Netacent for any amounts owed to Tahmisian or SSO.

Additionally, some combination of Isaac, Watt, and Jordan shall forfeit and transfer to Tahmisian sufficient shares, so that his aggregate interest is equal to 52% of all outstanding shares in Netacent, or alternatively, acquire his 52% interest utilizing a valuation expert and methodology agreed to by the parties. If the parties cannot agree on a methodology and expert, the parties shall obtain a written proposal from their preferred expert that outlines their qualifications and explains why their proposed methodology is the most appropriate and the Court will appoint the expert, with Netacent paying the costs. The valuation shall determine the highest intermediate value that the shares have held since October 28, 2021.

Following this process, if Isaac, Watt, and/or Jordan do not purchase Tahmisian's shares, and Tahmisian retains 50% or greater control of Netacent, Inc., all actions purportedly taken by Netacent's shareholders after October 28, 2021, are invalidated. Otherwise, the shareholder actions remain in effect.

a. Indemnity/Contribution

Having found that it would be inequitable to allow Netacent funds to repay the debts of Isaac's family but not Tahmisian's despite recognition that both were essential, Netacent shall be liable to Tahmisian for indemnity or contribution in the amount of $716,870.57, with interest accruing on the unpaid principal balance from June 1, 2026, owed to Peck.[306]

Netacent shall be liable to Tahmisian for indemnity or contribution in the amount of $864,873.39, with interest accruing on the unpaid principal balance from August 19, 2025, owed to Lynne.

B. Relief Awarded to SSO

This Court has found and concluded that SSO has proven its claims of interference with a prospective business advantage and promissory estoppel. The appropriate award of damages for

[306] Interest shall accrue at the rate set forth in the proof of claim and calculated to $155.51 per diem.

interference with prospective business advantage is the lost profits from the advantage. *See Pac. Nw. Bell Telephone Co.*, 398 P.2d at 67 ("The measure of damages to a business is the loss of profits arising from a wrongful act"). Accordingly, SSO is awarded damages of $7,174,774.79 for Claim 16.

Similarly, SSO has demonstrated that Netacent should be estopped from denying its obligation to pay SSO for services rendered under the ADOL contract. Idaho has not adopted a single theory of damages for promissory estoppel. *See SilverWing at Sandpoint, LLC*, 435 P.3d at 1116 n. 3. As the parties were acting in cooperation, this Court will award SSO only the costs it incurred in reliance on this arrangement. Accordingly, SSO is awarded $649,069.61 as damages for Claim 18.

The total amount awarded to SSO against Netacent is $7,555,432.34.[307]

VII. Conclusion

McAllister advised Tahmisian and Isaac when he supervised both at IDOL and he tried to advise and guide both when he joined Netacent, but ultimately, even his guidance could not bridge the gulf between them, resulting in damage to SSO and Netacent. In one of his final communications to both Isaac and Tahmisian, he explained:

> The bottom line is I don't see how Netacent and Solid State can be successful in the long run unless you and Isaac get together and come to some accommodation . . . . I refuse to be associated with the demise of what should have been a highly successful enterprise . . . . in my opinion, the dispute between you and Isaac will likely bring about that demise. I implore you both to put an end to that! You two are the only ones who can do that.[308]

Unfortunately, neither Isaac nor Tahmisian listened to McAllister and his prediction has come true. Tahmisian is in bankruptcy. SSO has no employees and is a shell of its former shelf, and Netacent's litigation has proven unsuccessful. As a result of this litigation, Tahmisian owns 52% of an entity subject to a judgment in excess of $10,000,000, and there remains uncertainty regarding ownership of Netacent pending Isaac, Jordan, and Watt's ability to acquire Tahmisian's 52% interest, or convey to him shares equal to 52% of all outstanding stock in Netacent.

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[307] The award of damages is only against Netacent because SSO dealt with Netacent on a company-to-company level. However, nothing prevents Netacent from seeking recovery against the directors and shareholder who directed it to take these illegal and invalid acts.

[308] Ex. 2196.

A judgment consistent with these findings of fact and conclusions of law will be entered, and any relief not specifically addressed is denied as moot in light of the Court's findings and conclusions.

DATED: July 31, 2026

HON. BENJAMIN P. HURSH
U. S. BANKRUPTCY JUDGE
SITTING BY DESIGNATION
U.S. COURTS, DISTRICT OF IDAHO