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Fourth Judicial District, Elmore County
Shelley Essl, Clerk of the Court
By: Deputy Clerk - Furst, Heather

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR ELMORE COUNTY

KOPPINGER INVESTMENTS, LLC; TIMBER CANYON-MT, LLC; 2CK INVESTMENTS, LLC; AND JEFF and SON, LLC, Applicants, vs. IRWS, LLC; VALERIAN, LLC; and SIMCO VENTURE FUND, LLC, Respondents.	Case No: CV20-24-0583 **MEMORANDUM DECISION AND ORDER ON APPLICATION FOR APPOINTMENT OF RECEIVER**

I.
INTRODUCTION

THIS MATTER is before the Court on Applicants Koppinger Investments, LLC, Timber Canyon-MT, LLC, 2CK Investments, LLC, and Jeff and Son, LLC (collectively "Applicants'") Motion for Appointment of Receiver filed on April 1, 2024.[1] The Motion seeks an Order appointing CFO Solutions, Inc., d/b/a Ampleo as receiver over IRWS, LLC. Respondent IRWS, LLC filed a Motion to Dismiss in conjunction with a Motion for Change of Venue on May 9, 2024. After venue had been changed to Elmore County, a hearing was held on July 2, 2024, where Valerian, LLC joined IRWS's motion to dismiss, and made an oral motion to either

[1] This action was initially filed in Ada County, Case Number CV01-24-05776. An Order changing venue to Elmore County was entered on May 17, 2024.

dismiss or stay the proceedings pursuant to Idaho Rule of Civil Procedure 12(b)(8).[2] Additionally, Applicant 2CK Investments, LLC and Jeff and Son, LLC joined Applicants Koppinger and Timber Canyon-MT's brief on the issue of the stay, and oppose Respondents' motion to dismiss and/or stay and support the appointment of a receiver in this case. After allowing supplemental briefing on the issue to stay the proceedings, which was to be filed by July 12, 2024, the Court hereby renders the following decision and orders.[3]

II.
BACKGROUND

IRWS was initially formed in December 2018, with its primary business and purpose being the operation and management of the Simco Road Regional Landfill (hereinafter, "Landfill"), which is a waste disposal facility located in Elmore County, Idaho. IRWS's internal operation is governed by an Amended and Restated Operating Agreement of IRWS, LLC, which was effective as of July 24, 2020. IRWS operated the Landfill by virtue of a Conditional Use Permit ("CUP") that was granted by Elmore County. The Applicants and Respondents comprise the six (6) members of IRWS. At the time of the filing of this action, IRWS's Board of Directors was composed of John C. Crigler; David Greendeer; Alex Verlanic; and Russ Woolery, who delegated its management authority to certain officers, which include Mr. Crigler, (President); T.J. Wiggs (Secretary); Alex Verlanic (Treasurer); and John Tulac (Chief Legal Officer).

[2] Valerian later filed a written motion and brief on July 12, 2024. The supporting brief was not signed by counsel, and the Court allowed this oversight to be corrected pursuant to I.R.C.P. 11(a).

[3] On July 12, 2024, new counsel for IRWS submitted a Declaration and Notice that included the affidavit of Alex Verlanic withdrawing his previously filed declaration in support of the Application for Appointment of Receiver. The declaration also provides that Mr. Verlanic has resigned his position from the Board, as well. In reaching the decision on the issues presented, the Court disregards Mr. Verlanic's previous declaration in support.

IRWS's CUP to operate the Landfill was subsequently revoked by Elmore County on September 21, 2023, and the Idaho Department of Environmental Quality ("IDEQ") provided IRWS with Land Closure Instructions on November 7, 2023.[4]. The revocation resulted from issues associated with the accepting and processing of tire-related products, where violations had occurred prior to IRWS's acquisition of the Landfill in July 2020, as well as allegations that IRWS was operating the Landfill in a manner that violated a 2019 Consent Decree, 2020 Waste Tire Volume Reduction and Management Plan for the Landfill (WTVRMP), and other regulatory and/or statutory requirements as set forth in a "Notice of Violation" sent by Elmore County on or about March 12, 2023.[5]

On August 25, 2023, Elmore County notified IRWS that IRWS's CUP, which is necessary to operate the Landfill, would be revoked unless the issues raised in the Notice of Violation were cured. Without the CUP, IRWS is not able to lawfully operate the facility, and as a result of the revocation of the CUP, Elmore County ordered IRWS to cease and desist operation of the Landfill and that it be closed. Subsequently, on November 7, 2023, IDEQ notified IRWS that it must undertake the closure activities in accordance with an IDEQ-approved

[4] Elmore County filed litigation against IRWS on November 15, 2023, in Elmore County Case No. CV20-23-1110 asserting claims for declaratory and injunctive relief, breach of landfill mitigation agreement and claim for indemnification, and violations of Idaho Code § 39-6502(1). IRWS has countersued. Prior to the filing of that lawsuit, and shortly before the Elmore County Commissioners affirmed the revocation of the CUP, IRWS filed a Complaint in federal court alleging due process violations under the Fifth and Fourteenth Amendments of the United States Constitution pursuant to 42 U.S.C. § 1983, and similar violations under Article I, Section 13 of the Idaho State Constitution. The federal case was dismissed with prejudice by the Honorable David C. Nye, Chief U.S. District Court Judge, on December 21, 2023. That decision is currently on appeal to the 9th Circuit.

[5] IRWS acquired the Landfill from CWT who had purchased it from IWS. Prior to that acquisition, the issues associated with the accepting and processing of tire-related products were the subject of several documents: A 2017 Consent Order, dated May 12, 2017, entered between IDEQ and IWS; a Waste Tire Volume Reduction and Management Plan, which was appended to the 2017 Consent Order; a Consent Order dated June 12, 2019, entered between IDEQ and IWS, and a June 19, 2019 Waste Tire Volume Reduction and Management Plan agreed to between IDEQ and IWS. IRWS and IDEQ agreed to a new management plan (2020 WTVRMP) in October 23, 2020, which was amended in December 2020.

closure plan, and IDEQ has demanded closure of the Landfill within 180 days of November 7, 2023 –or May 5, 2024.

Applicants argue that IRWS is embroiled in a myriad of legal, financial, and environmental issues, and assert that if IRWS is not already insolvent, it is rapidly approaching insolvency, especially since its only income producing asset, which is the Landfill, cannot lawfully operate. Additionally, Applicants assert that the financial and environmental issues pose a significant risk to not only IRWS itself, but also to its individual member-investors, who are personally obligated to its debt and bond obligations, as well as to the public. The Applicants further argue that IRWS has already been dissolved per the Operating Agreement since IRWS's entire business purpose, which is the operation of the Landfill, is unlawful since the CUP was revoked. Therefore, the Applicants request a qualified receiver be appointed over IRWS.

Respondents argue that the Applicants are all minority members (or in one instance, a dissociated former minority member) who are dissatisfied with the IRWS Board and/or the Officers' operation of the company, and that the Applicants' claims are derivative in nature and should be dismissed for failure to comply with I.R.C.P. 78. They also argue that the action should be dismissed for failure to state a claim upon which relief can be granted since IRWS is not a "corporation;" and that the statutory authority on which the Applicants base their claim (Count Three) applies expressly to corporations.

Additionally, Respondents argue that Count Two of the April 1st Application Fails to State a claim since IRWS's operating agreement provides for the dissolution and winding up of IRWS's business; they also assert that Count One must also be dismissed since declaratory judgments are not an independent claim. Furthermore, Respondents argue that there is no proof that the May 2, 2024 Motion for Appointment of Receiver and Judicial Notice has been served

upon all interested parties; that it fails to include or incorporate the original April 1, 2024, filling; and that it fails to state the basis or grounds for the relief sought.

III.
JUDICIAL NOTICE

Pursuant to Idaho Rule of Evidence 201, the Court may take judicial notice of a fact that is not subject to reasonable dispute if it is generally known within the trial court's territorial jurisdiction, or if it can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned. I.R.E. 201(b). "When a party requests judicial notice of records, exhibits, or transcripts from the court file in the same or a separate case, the party must identify the specific items for which judicial notice is requested or offer to the court and serve on all parties copies of those items." *Id.*

Additionally, when the court takes judicial notice of records, exhibits, or transcripts from the court file in the same or separate case, the court "must identify the specific documents or items so noticed." *Id.* This includes adjudicative facts, such as those set forth in, or exhibited by, documents filed in separate proceedings. *See IDHW v. Doe (2023-24)*, 172 Idaho 891, 537 P.3d 1252, 1259–61 (2023). In taking judicial notice, the court "must take judicial notice if a party requests it and the court is supplied with the necessary information." I.R.E. 201(c)(2).

In this case, Applicants request the court to take judicial notice of various adjudicatory facts as set forth in its Application. At the hearing on July 2, 2024, the parties were allowed to be heard on Applicants' Motion to take Judicial Notice pursuant to I.R.E. 201(e). Here, the Applicants have identified the specific filings and have provided copies of those filing attached to the motion.

Therefore, after considering the motion, and in an exercise of discretion, the Court hereby takes judicial notice of the following:

1. The Court takes judicial notice of the fact that a Verified Complaint for Breach of Guaranty, has been filed in *Umpqua Bank v. Anderson, et al*., CV01-24-3635 and that a Verified Complaint has been filed in *Atlantic Specialty Insurance Company v. IRWS, LLC, et al.,* Index No. 651372/2024 (Supreme Court of the State of New York County of New York), where said complaints are attached as Exhibits 12 and 13 to Applicants' Brief in Support filed on May 2, 2024.
2. The Court takes judicial notice of the Memorandum Decision and Order, entered in *IRWS, LLC v. Elmore County et. al*, Case No. 1:23-cv-00485-DCN (D. Idaho) attached as Exhibit 14 to the Applicants' Brief field on May 2, 2024; including the factual and legal conclusions reached by the United States District Court for the District of Idaho.
3. The Court takes judicial notice of the Findings of Fact, Conclusions of Law, and Order, entered in *In the Matter of Revocation of Conditional Use Permit for Simco Road Regional Landfill*, Elmore County Planning and Zoning Commission, attached as Exhibit 15 to Applicant's Brief filed on May 2, 2024, including the legal and factual conclusions reached therein.
4. The Court takes judicial notice that IDEQ filed a lawsuit on June 6, 2024, against IRWS captioned as *Idaho Department of Environmental Quality v. IRWS, LLC*, CV20-24-0575 and that that action has been removed to the Federal District Court. The Complaint is attached to the Supplemental Declaration filed by Matthew Beeter, filed on June 27, 2024, as Exhibit A.

IV.
ISSUES PRESENTED

The issues pending before the Court as a result of the July hearing are as follows:

1. Motion to Stay or Dismiss Proceedings pending the appeal federal court in Case No. 1:23-CV-00458-DCN pursuant to I.R.C.P. 12(b)(8);
2. Motion to Dismiss for Failure to State a Claim; and
3. Application for Dissolution and Appointment of Receiver.

The Court orally denied the motions to dismiss and motion for stay at the hearing, and indicated that it would supplement its oral ruling with a written decision. The Court then took the matter regarding the application for appointment of receiver under advisement pending the additional briefing on the Respondents' renewed motion for stay.

V.
LEGAL STANDARDS REGARDING MOTIONS TO DISMISS / STAY

A. Motion to Stay or Dismiss Proceedings.

Courts have the inherent power to stay one proceeding pending the outcome of another proceeding. *See Landis v. North American Co*., 299 U.S. 248, 57 S.Ct. 163 (1936). "The determination as to whether to grant a stay of proceedings pending the resolution of related proceedings in another court is a matter vested in the sound discretion of the trial court." *Cont'l Cas. Co. v. Brady*, 127 Idaho 830, 834, 907 P.2d 807, 811 (1995); I.R.C.P. 12(b)(8). Pursuant to I.R.C.P. 12(b)(8), a trial court may dismiss an action where there is "another action pending between the same parties for the same cause."

> Two tests govern the determination of whether a lawsuit should proceed where a similar lawsuit is pending in another court. First, the court should consider whether the other case has gone to judgment, in which event the doctrines of claim preclusion and issue preclusion may bar additional litigation. . . . The second test is whether the court, although not barred from deciding the case, should nevertheless refrain from deciding it.

Johnson v. Johnson, 147 Idaho 912, 917, 216 P.3d 1284, 1289 (2009) (citation omitted).

B. <u>Motion to Dismiss for Failure to State of Claim.</u>

A claim is subject to dismissal if it is unsubstantiated by well-pleaded factual allegations. See I.R.C.P. 12(b)(6). When dismissal is sought on that basis, the court accepts as true all well-pleaded factual allegations, and those that are not "purely conclusory," and thereby decides whether a legally viable claim is stated. *Orrock v. Appleton*, 147 Idaho 613, 618, 213 P.3d 398, 403 (2009).

However, outright dismissal is appropriate only if "it appears beyond doubt that the [claimant] can prove no set of facts in support of his claim that would entitle him to relief." *Luck v. Rohel*, 171 Idaho 51, 55, 518 P.3d 350, 354 (2022) (*quoting Paslay v. A&B Irrigation Dist*., 162 Idaho 866, 869, 406 P.3d 878, 881 (2017)). In determining whether a claim for relief has been stated, the Court looks to all of the facts and inferences in the record in favor of the non-moving party. *Id*. Documents attached to a pleading may be considered in deciding whether well-pleaded factual allegations substantiate the challenged claim. *E.g., Bennett v. Bank of E. Or*., 167 Idaho 481, 485–86, 472 P.3d 1125, 1129–30 (2020) (citing *Tellabs, Inc. v. Makor Issues & Rights, Ltd*., 551 U.S. 308, 322 (2007)).

VI.
ANALYSIS
MOTIONS TO DISMISS

A. Motion to Stay.

1. The Timing of the Motion

This action was initiated on April 1, 2024. Respondent Valerian waited until the hearing on July 2, 2024, to make an oral motion pursuant to Idaho Rule of Civil Procedure 12(b)(8) arguing that this case should either be dismissed or stayed due to the pending appeal in federal court. Thereafter, the other Respondents joined in this request. The manner that this has unfolded is the essence of "trial by ambush." Although the motion was not made until after Elmore County's Motion to Intervene was orally granted at the hearing, the attendant fact of whether they were or were not allowed to intervene did not change the substance of their Rule 12(b)(8) motion or the arguments that were advanced in support of it.

Although Elmore County's intervention has some relevance on the analysis of whether the pending action "involves the same parties," the substantive argument of why this action should be stayed or dismissed under Rule 12(b)(8) is in regards to the revocation of IRWS's CUP, and that did not change once Elmore County was granted leave to intervene. Also, Elmore County's intervention was limited in purpose. The Respondents' motion could have been properly filed well in advance of the July 2nd hearing so that all of the parties had the opportunity to brief and respond to the issue prior to advancing oral argument to the Court. This is especially so given that Elmore County filed its motion to intervene on May 2, 2024, which was before the Motion to Change Venue to Elmore County was filed by IRWS on May 9, 2024, and several months before the July hearing. Moreover, once the Change of Venue Order was entered by the District Court in Ada County, Applicants filed their notice of hearing on their Application on

June 11, and IRWS filed its notice of hearing on its motion to dismiss the next day on June 12, 2024. Despite this, Respondent Valerian waited until the day of the July hearing to bring forth its motion. Based upon the totality of the circumstances and the manner in which this case has advanced procedurally, the Court does not condone such tactics.

However, due to the late nature of the motion, and for procedural fairness, the Court allowed the parties to conduct additional briefing on the Rule 12(b)(8) motion once Respondents renewed their motion to stay so that the Applicants would have the opportunity to properly respond and to the extent that the Court could determine whether the denial of the stay should be reconsidered. Consequently, this caused further delay in the adjudication of the issues presented in this action.

2. The Court declines to issue a stay of proceedings in this case.

This Court has discretion to issue a "stay of proceedings pending the resolution of related proceedings in another court." *Cont'l Cas. Co. v. Brady*, 127 Idaho 830, 834, 907 P.2d 807, 811 (1995). Under the first test set forth in *Johnson*, although the action between IRWS and Elmore County is pending appeal in the Ninth Circuit, that case has proceeded to final judgment where it was dismissed with prejudice in favor of Elmore County. That action involved a constitutional challenge of the revocation of IRWS's CUP, and not the issue of the dissolution of the company and appointment of a receiver as presented in this case and as brought by the Applicants, as members of IRWS. Additionally, in the Ninth Circuit case, the parties were Elmore County, its Board of Commissioners, the Elmore County Land Use and Building Department, and Planning and Zoning on one side, and on the other, IRWS –and not

the members (Applicants), Valerian, LLC, or Simco Venture Fund, LLC. So, the parties are not the same.

Additionally, the other matter pending, Elmore County by and through the Elmore County Board of County Commissioners v. IRWS, LLC; in Elmore County Case No. CV20-23-1110, involves alleged violations of Idaho statutes, and breaches of agreements between those Elmore County and IRWS, specifically an alleged breach of the Landfill Mitigation Agreement. That action is tangentially related to at least some of the *arguments* presented here, specifically that IRWS's CUP to operate the Landfill has been revoked. However, the primary issue here involves the dissolution of the company and the appointment of a receiver, the solvency of IRWS, and involves different parties.[6] Furthermore, the Court notes that IRWS did not pursue an administrative appeal to the district court in regards to the Board's decision to revoke the CUP, where, as a result of the revocation, it is not permitted to lawfully operate the Landfill, which is the company's primary purpose. Rather, IRWS filed a lawsuit in federal court challenging the Constitutionality of the Board's action, which was ultimately dismissed with prejudice.

In evaluating the second test under *Johnson*, where in situations the court is not barred from deciding the case, the court must consider whether it should nevertheless refrain from deciding it. Here, the court determines that refraining from deciding the case is not appropriate, given the totality of the circumstances.

[6] The Court understands IRWS's argument that the solvency issue is related directly to Elmore County revoking its CUP and thereby affecting its ability to generate income from the only income generating asset that it has – the Landfill. However, following IRWS's reasoning, the pending loan default litigation brought by Umpqua Bank and the Surety Bond litigation brought by Atlantic, should also be stayed. This is unpersuasive.

In reaching a decision on whether the Court should nevertheless refrain from deciding the action and grant a stay, the Court considers the competing interests involved and the particular circumstances presented. *See Keating v. Office of Thrift Supervision,* 45 F.3d 322, 325 (9th Cir. 1995). In Idaho, there is no articulated or enumerated set of factors for a court to consider when deciding whether to lift a stay of proceedings or otherwise decide a case when not prohibited. However, the Court finds guidance by considering federal authority and the following factors:

> (1) The interest of the plaintiffs in proceeding expeditiously with this litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay; (2) the burden which any particular aspect of the proceedings may impose on defendants; (3) the convenience of the court in the management of its cases, and the efficient use of judicial resources; (4) the interests of persons not parties to the civil litigation; and (5) the interests of the public in the pending civil and criminal litigation.

Id.; *Corp. v. Molinaro*, 889 F.2d 899, 903 (9th Cir. 1989).

Here, the issues presented regarding the appointment of a receiver are based upon an emergent situation involving the management of IRWS, its solvency, and the inability to operate the Landfill as presented by the Applicants who are members of the company. A delay in considering this action may greatly prejudice the Applicants, given the financial implications involved for the company members regarding the allegations presented herein, as well as for those persons not parties to the action, such as the public, Elmore County citizens, and tax payers. The operation of the Landfill, which is IRWS' business purpose, is located within Elmore County, and the interests of the public would be served should this matter timely proceed, since there are emergent issues requiring immediate attention that implicate the public health, as well as environmental and water quality issues. These factors outweigh any burden imposed upon the Respondents with the action moving forward so that adjudication of the receivership issue, as presented by the Applicants, can occur. This is especially so compared to

the prejudice to the rights and interests of IRWS' minority members and others that would result by continued delay in this case, given that they are personal guarantors and "on the hook" for IRWS's loan and surety obligations.

Accordingly, the Respondents' Motion to Stay and/or Dismiss pursuant to I.R.C.P. 12(b)(8) is denied.

B. Respondents' Motion to Dismiss for Failure to State a Claim

IRWS advances four arguments in support of its motion that Applicants have failed to state a claim upon which relief can be granted: (1) Applicants' claims are derivative in nature, and therefore must comply with I.R.C.P. 78; (2) Idaho law does not permit receivers to be appointed over limited liability companies; (3) the appointment of a receiver would violate IRWS's operating agreement; and (4) a declaratory judgment action is not a standalone cause of action under Idaho law. None of these grounds are prevailing.

1. This is not a derivative action that implicates I.R.C.P. 78.

I.R.C.P. 78 governs derivative actions. It also outlines the applicability of the rule and pleading requirements for derivative actions.

> Prerequisites. This rule applies when one or more shareholders or members of a corporation or an unincorporated association bring a derivative action to enforce a right that the corporation or association may properly assert but has failed to enforce. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of shareholders or members who are similarly situated in enforcing the right of the corporation or association.

I.R.C.P. 78(a).

"A derivative action occurs where a member of a limited liability company brings a claim to enforce the company's rights . . . ." *Wadsworth Reese, PLLC v. Siddoway & Co., PC,*

165 Idaho 364, 371, 445 P.3d 1090, 1097 (2019); *see also* I.C. § 30-25-802 (derivative actions seek "to enforce a right of a limited liability company"). IRWS's assertion that Applicants' claims are "clearly derivative in nature, in that they seek to enforce a right that IRWS itself may properly assert, but has failed to" is not persuasive and misconstrues what the present action actually concerns.[7]

Here, the Applicants seek a declaratory judgment that IRWS is already dissolved, via the operating agreement; and an order dissolving IRWS under I.C. § 30-25-7001, with a related request for the appointment of a receiver over IRWS. Thus, Applicants are not seeking to enforce IRWS's rights in this action, nor are they seeking to enforce a right of IRWS "requesting that they cause the company to bring an action to enforce that right." I.C. 30-25-802. Rather, Applicants are seeking to protect their individual interests by winding up IRWS and dissolving it, which they assert has already occurred. Thus, none of the Applicants' claims are derivative under I.C. 30-25-802, and Rule 78 is inapplicable.

Accordingly, there is no basis for dismissing the Application based upon the requirements of I.R.C.P. 78.

2. <u>Receivers may be appointed over limited liability companies in Idaho.</u>

Idaho Code provides that a receiver may be appointed by the court in which an action is pending when, "a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights." Idaho Code § 8-601(5). The appointment of a receiver is an equitable remedy within the power of the court adjudicating business entity disputes. *See Commercial Trust Co. v. Idaho Brick Co.*, 25 Idaho 755, 139 P. 1004 (1913).

[7] *See* Mem. Support IRWS, LLC's Mot. Change Venue, or Alt., Dismiss, p. 6, filed May 9, 2024.

Additionally, the Code allows for the appointment of a receiver in any case "where receivers have heretofore been appointed by the usages of courts of equity." I.C. § 8-601(6).

A limited liability company is a legal business entity "distinct from its members." I.C. § 30-6-104(1); *Wandering Trails, LLC v. Big Bite Excavation, Inc*., 156 Idaho 586, 594, 329 P.3d 368, 376 (2014) ("Members of an LLC are not liable for the misconduct of the company unless it is proven that the company is the alter ego of the member. This is the equivalent of piercing the corporate veil for a limited liability company." (citations omitted)). "[A] member may maintain a direct action against another member, a manager, or the limited liability company to enforce the member's rights and protect the member's interests, including rights and interests under the operating agreement or this act or arising independently of the membership relationship." I.C. §30-22-801.

Applicants have cited the court to a number of cases reaffirming that the appointment of a receiver is an equitable remedy within the power of the court in adjudicating business entity disputes. *See Dalliba v. Riggs*, 11 Idaho 364, 82 P. 107, 109 (1905); *see also* I.C. §§ 30-25-111(11), 30-21-702 ("the principles of law and equity supplement" Idaho's statutory provisions regarding limited liability companies); *see also Hall v. Nieukirk*, 12 Idaho 33, 85 P. 485, 488–89 (recognizing the longstanding equitable power of courts to appoint receivers over mismanaged business entities). Additionally, the appointment of a receiver over a limited liability company has been implicitly established in Idaho case law. *See* e.g. *Johannsen v. Utterbeck*, 146 Idaho 423, 426–27, 196 P.3d 341, 344–45 (2008) (noting that a district court had "appointed a receiver to carry out an accounting for dissolution and to wind up the LLC").

Accordingly, Respondents' argument that Idaho law does not permit the Court to appoint a receiver over a Limited Liability Company is without merit.

3. Appointment of a receiver is not prohibited by the operating agreement.

IRWS posits that Applicants have failed to follow the procedures mandated by the operating agreement relating to company dissolution, and therefore pursuing this application is unnecessary and in violation of the Amended and Restated Operating Agreement (hereinafter, "Operating Agreement") and the members' agreed-upon terms. The Operating Agreement provides that IRWS shall dissolve as soon as it becomes unlawful for it to carry on its business, or upon "the entry of a decree of judicial dissolution." *See* Operating Agreement, p. 23 § 12.2.

The Operating Agreement also provides that members retain all rights and remedies available in law and equity. *See* Operating Agreement p. 26 § 13.6. "Operating agreements are contracts." *Nelsen v. Nelsen*, 170 Idaho 102, 134, 508 P.3d 301, 333 (2022) (*citing Lamprecht v. Jordan, LLC,* 139 Idaho 182, 186, 75 P.3d 743, 747 (2003). Moreover, an operating agreement cannot alter statutory rights, *Id*. at 135, 508 at 334, nor can an operating agreement vary the causes of dissolution stated in Idaho's Limited Liability Company Act. *Id*.; I.C. § 30-25-105(c)(9).

In Idaho, a member of a limited liability company may apply to the district court for an order dissolving the company on the ground that the "conduct of all, or substantially all the company's activities and affairs is unlawful" or it is "not reasonably practicable to carry on the company's activities and affairs in conformity with the certificate of organization and the operating agreement." I.C. § 30-75-701(a)(4). Members may also seek dissolution where those in control of the company have "acted, are acting, or will act in a manner that is illegal or fraudulent" or "have acted or are acting in a manner that . . . will be directly harmful to the applicant." *Id*.

Accordingly, Applicants maintain all rights in law and equity to pursue their action for appointment of a receiver and dissolution.

4. Applicants have properly pleaded a Declaratory Judgment Action.

IRWS argues that declaratory judgments are not an independent claim, therefore Applicants' claim for declaratory judgment that IRWS has been dissolved should be dismissed. This argument is without merit, as Idaho law is settled that Idaho's Declaratory Judgment Act "does not create any new substantive rights, but rather authorizes a form of relief . . . where such rights already exist." *Sommer v. Misty Valley, Ltd. Liab. Co.*, 170 Idaho 413, 420-21, 511 P.3d 833, 840-41(2021) (citation omitted). Courts "have power to declare rights, status, and other legal relations." I.C. § 10-1201.

In this case, Applicants are asserting their rights as members of the company in seeking a declaratory judgment as to their existing legal rights and obligations as set forth in the Operating Agreement and as allowed under the statutes governing limited liability companies.

Accordingly, Applicants, as members of the company, have properly set forth a claim for Declaratory Relief seeking interpretation and/or seeking the enforcement of rights that they already possess. They are not seeking to create a claim, but rather, they are seeking a declaration from the court that under the terms of the Operating Agreement, IRWS has already entered dissolution status and must be wound up.

5. Service of Process on Respondents.

IRWS asserted in earlier motions and memorandum that the Applicants had failed to serve the other Respondents with either their Application for Receivership motion and/or failed to articulate the relief that they sought with particularity. Applicants contend otherwise, and assert that the record is clear and that they set forth in "painstaking detail" the relief sought from

the court. Upon review of the file, the Application, and Motion for Receivership, the Court agrees.

Additionally, as to service: a Notice of Appearance was filed on behalf of Respondent IRWS on April 12, 2024; a Notice of Appearance was filed on May 9, 2024, on behalf of Respondent Valerian, LLC; and a Notice of Appearance was filed on June 28, 2024, on behalf of Simco Venture Fund, LLC.

The voluntary appearance of a party, or service of any pleading by the party, generally constitutes voluntary submission to the personal jurisdiction of the court and is equivalent to the service of process upon that party. I.R.C.P. 4.1; *Engleman v. Milanez,* 137 Idaho 83, 84, 44 P.3d 1138, 1139 (2002). Exceptions to the general rule are set forth in subsection (b) to Rule 4.1.

None of the Notice of Appearances filed on behalf of the Respondents were "limited" or "special appearances" or filed motions under I.R.C.P. 12(b)(2), (4), or (5), or joinder therewith of other defenses. *See* I.R.C.P. 4.1(b). By filing the notice of general appearance, each Respondent appeared in this action, and such appearance was the equivalent of the service of a summons upon them.

Accordingly, any motion to dismiss for purposes of insufficiency of process is not well taken.

C. <u>Conclusion</u>

Based upon the foregoing, the Respondents' motions to dismiss and/or stay this action are denied. Accordingly, the Court will next determine whether the application for the appointment of a receiver should be granted.

VII.
APPOINTMENT OF RECEIVER

The Applicants cite to several grounds for the appointment of a receiver in their motion and Application for Appointment of Receiver filed in this matter. Specifically, Applicants assert that the appointment of receiver is appropriate because IRWS is already insolvent, or imminently approaching insolvency, based on loans being called, collateral at risk of foreclosure, lack of income, IDEQ fines, lawsuits by Umpqua and Atlantic, Elmore County, and the IDEQ. Applicants also assert injury and financial ruin to associated members and that the public will suffer due to the environmental issues at the Landfill, and maintain that IRWS has already entered dissolution based upon the language in the Operating Agreement.

In reaching the following decision, the Court considers the Notice of Filing of Declarations in Support of the Application for Appointment of Receiver filed on April 17, 2024,[8] and the First Supplemental Notice of Filing of Declarations in Support of the Application for Appointment of Receiver filed on April 18, 2024, all of which were also attached to the supporting brief filed on May 2, 2024,[9] as well as the Supplemental Declaration in Support of Application filed on June 27, 2024, and the Declarations of the Elmore County Commissioners filed on June 28, 2024. The Court also considers the Respondents' objections and opposition which were supported by memorandum and declarations filed on May 9, 2024. Furthermore, the Court also considers the arguments of the parties and evidence and testimony presented at the

[8] As noted previously, the Court does not consider Alex Verlanic's declaration previously filed in support of Applicants' Complaint and/or Motion for Appointment of Receiver given that the Court was made aware of his subsequent withdrawal of said Declaration in Support as evidenced in the Declaration filed on July 12, 2024, by IRWS's legal counsel.

[9] The supporting brief also included two new exhibits which were not previously filed, specifically Exhibit 14, which is the federal court decision and Exhibit 15, which is Elmore County's findings of fat and conclusions of law regarding the revocation of the CUP.

hearing held on July 2, 2024, where the court received sworn testimony from Mathew McKinlay, who was called by the Applicants, and John Tulac, who was called by the Respondents. The Court also received into evidence Respondent's Exhibit 1, which is a resume of Jason T. Saunders.

A. Standard of Review

Under I.C. §8-601(5), when an action is pending or after judgment, a receiver may be appointed by the court "in the case where a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency." Alternatively, under I.C. §8-602, upon the application of any member of a corporation, "the district court of the county in which the corporation carries on its business or has its principal place of business" may appoint a receiver after the corporation's dissolution. "[T]he power to appoint a receiver is largely in the discretion of the trial court, and an appellate court will not interfere with the exercise of such discretion except in cases of palpable abuse." *Smith v. Smith*, 167 Idaho 568, 584, 473 P.3d 837, 853 (2020).

B. The Appointment of a Receiver is Justified.

Under Idaho's Limited Liability Company Act, a limited liability company is dissolved when either "(1) an event or circumstance that the operating agreement states causes dissolution" occurs or "(4) on application by a member, the entry by the district court of an order dissolving the company on the grounds that (A) [t]he conduct of all or substantially all the company's activities and affairs is unlawful". I.C. §30-25-701(1); I.C. §30-25-701(4)(A). IRWS's Operating Agreement includes similar language.

Here, IRWS' Amended and Restated Operating Agreement, effective as of July 24, 2020, states that the Company shall dissolve if "any event that makes it unlawful for the business of the

Company to be carried on by the Members" occurs. IRWS's only business was the operation of the Simco Road Regional Landfill (the "Landfill"). Upon Elmore County's revocation of the Conditional Use Permit for that landfill, IRWS could not lawfully operate the landfill. The Court finds that IRWS was dissolved upon the revocation of the CUP.

The circumstances in which the appointment of a receiver is warranted is left to the sound discretion of the trial court. *Wechsler v. Wechsler*, 162 Idaho 900, 915, 407 P.3d 214, 229 (2017). The Applicants' arguments and the supporting declarations submitted by Matthew Beeter, Matthew McKinlay, Jolyn Montgomery, Holly Malletta, Colt Anderson, Jeffry Thompson, Mitra Mehta-Cooper, Mike Reno, and Terence Dahl persuades the Court to exercise its discretion in this case and grant the Applicants' Motion for Appointment of Receiver. In exercising the Court's discretion in this regard, the Court sets forth the compelling circumstances in reaching this decision.

1. ***IRWS's formation, funding, and acquisition of the Landfill***

It is not reasonably disputed that IRWS's primary and only business purpose pursuant to its Amended and Restated Operating Agreement was the operation of the Simco Road Landfill located in Elmore County, Idaho. IRWS acquired the Landfill on or around July 27, 2020, when it acquired CWT LLC's assets, who had just acquired the Landfill from IWS in July 2020.[10] Members, including the Applicants, entered into varying agreements in order to fund IRWS's acquisition of the Landfill. Additionally, the Applicants all became members of IRWS for the express purpose of investing in the Simco Road Regional Landfill.

[10] Per Mr. Tulac's testimony, CWT is IRWS's second highest creditor, who carried back $3.5 million dollars when IRWS acquired the Landfill. Pursuant to Mr. Tulac's testimony, at that time, IRWS was run by the minority members and they were $3,5 million dollars short. Mr. Tulac further testified that he is not a member of IRWS or Simco Venture Fund, and does not hold any interest in IRWS. However, he has a financial interest in CWT, and tied to IRWS as a creditor.

IRWS obtained a $12,000,000 loan from Columbia State Bank, with interest accruing at a rate of 5.5% per annum (Loan No. xxx912) to fund the acquisition of the Landfill on or around July 24, 2020. IRWS also obtained a loan from Columbia State Bank on or around November 1, 2021, providing a line of credit that currently has a maximum limit of $500,000, with interest accruing at a rate of 4.5% per annum (Loan No. xxx773). Both loans are currently held by Umpqua Bank and are in default status. Jolyn Montgomery, John Malletta, Colt Anderson, and Jeffry Thompson, signed a Continuing Guaranty (Limited) dated July 24, 2020, for Loan No. xxx912, and all but Thompson signed a Commercial Guaranty, dated November 1, 2021, for Loan No. xxx773.[11]

On or around September 27, 2019, Atlantic Specialty Insurance Company, a Member of Intact Insurance Specialty Solution (hereinafter "Atlantic") issued Surety Bond No. xxx505 on behalf of IRWS, and in favor of the Idaho Department of Environmental Quality ("IDEQ") in the amount of $2,500,000.[12] In order to obtain the surety bond, Alex Verlanic, Colt and Keelie Anderson, Jeffrey Thompson, John and Holly Malletta, John and Enid Runft, and Jolyn Montgomery were each required to execute a "General Indemnity Agreement," and Simco Venture Fund, LLC, subsequently became an additional indemnitor to Atlantic under the Bond, (hereinafter collectively "Indemnitors").

2. ***Emerging issues at the Landfill, notice of violations, and revocation of CUP***

[11] Montgomery is the Trustee of the Jolyn Montgomery Revocable Inter Vivos Trust dated December 16, 2009, and the Trust is the sole member of Koppinger Investments, LLC. Holly Malletta is the personal representative of the Estate of John Malletta, and the manager of Timber Canyon-MT, LLC. Her late-husband, John, actually signed the continuing Guaranty (Limited). Anderson is a Member of Anderson C&B, LLC, which is a Member of 2CK Investments. Thompson is the sole member of Jeff and Son, LLC.

[12] Terence Dahl, who submitted a declaration at the request of the Applicants, is the Surety Claims Vice President for Atlantic.

On March 13, 2023, and August 7, 2023, Elmore County sent IRWS a Notice of Violation and a Second Notice of Violation, respectively, notifying IRWS that is was operating the Landfill in a manner that violated the conditions of the CUP, a Consent Order that it had entered into with IDEQ, and a Waste Tire Volume Reduction and Management Plan (TMP) that was dated October 23, 2020. Subsequently, the Elmore County Planning and Zoning Commissioners revoked IRWS's CUP on or around September 21, 2023, for failure to address the violations set forth in the notices. IRWS then appealed the revocation decision to the Elmore County Board of Commissioners (the "Board") who confirmed the Zoning Commission's decision and issued written findings of fact and conclusions of law. The Board thereafter ordered that IRWS cease and desist operation of the Landfill on November 2, 2023, due to the revocation.

IRWS was provided with Landfill Closure Instructions on November 7, 2023, following the revocation of the CUP, by Matthew Beeter who is the Solid Waste Program Manager for the IDEQ. Mr. Beeter had been working with IRWS related to the issues regarding the Landfill, and notified IRWS that since its CUP was revoked, IRWS was required to commence closure activities within 30 days and to complete such closure activities on or before May 2, 2024. On November 9, 2023, IDEQ issued IRWS a Notice of Violation and Notice/Demand for Stipulated Penalties under the 2019 Consent Order, which in part, acknowledged that, as of the date of the letter, the Landfill no longer had an active CUP from Elmore County and that the County had issued a cease-and-desist order on November 3, 2023, prohibiting further commercial operations of the Landfill.[13] Based upon photographs and waste logs by IRWS, it is believed that the

[13] As a result of IRWS's inability to accept solid waste, Elmore County has to haul and dispose of Elmore County's waste at alternative locations, at an estimated cost of $155,000 per month, per Ms. Mehta-Cooper's declaration.

Landfill currently contains an estimated 600,000 waste tires and tire chips –approximately 250,000 tires that remain undisposed, and an additional 200,000 to 300,000 whole tire-equivalent of tire shreds that remain undisposed.[14] Additionally, based upon the stipulated penalties for the Consent Order Violation, IDEQ is assessing approximately $531,000 for the violations and penalties, which continue to accrue daily at $1,000 per day.[15]

In February 2024, IDEQ notified Atlantic and requested that Atlantic fund the state-and-federally required financial assurance standby trust pursuant to the Surety Bond, due to IRWS's failure to fulfill its obligations in relation to closing the Landfill. Atlantic, thereafter demanded that the current management of IRWS correct the violations with the IDEQ, and as a result of IRWS's failure to correct the violations, in turn demanded that Indemnitors furnish Atlantic with $2,500,000 worth of collateral, under the terms of their agreement. On March 14, 2024, Atlantic filed a Verified Complaint in the Supreme Court of the State of New York, New York County, against IRWS and the Indemnitors for specific performance and breach of contract.[16]

3. <u>Ongoing issues and environmental implications.</u>

As this action has been pending over the last approximate four months, additional issues have emerged regarding the dire situation at the Landfill as discovered by the IDEQ and Central District Health. The Landfill's leachate storage system has been determined to be at risk of

[14] As set forth in the Declarations filed by Beeter and Mitra Mehta-Cooper, who is the Land Use and Building Director for Elmore County, Idaho. Mehta-Cooper is familiar with the history of the Landfill, and IRWS's operation of it, and was copied in on many of the notices and letters issued by IDEQ.

[15] The Notice of Violation was issued to IRWS on November 9, 2023, which also identified seven (7) additional violations of state and federal requirements with respect to the Landfill. Based upon Beeter's Declaration, only minimal steps have been taken by IRWS to address the violations, and finance and penalties may be sought through court action, and were initially calculated at $92,000 plus $2,000 per day, commencing on November 9, 2023.

[16] *Atlantic Specially Insurance Company v. IRWS, LLC, et al*., Index No. 651372/2024.

failure, and IDEQ notified IRWS on April 17, 2024, that it was no longer permitted to recirculate leachate at the Landfill, and that it needed to make immediate arrangements to address leachate issues on site and engage an appropriate service provider to have leachate hauled offsite for disposal.[17] During an IDEQ inspection on May 8, 2024, IDEQ learned that leachate was no longer being recirculated, but that there was no instruction or funding from IRWS to pump or facilitate off-site disposal of the Landfill leachate.

At that visit, IDEQ noted that the leachate storage system would reach capacity within the next several weeks, and if that were to occur, leachate would no longer be pumped off the landfill liner, causing it to buildup on the Landfill's liner. This increases the risk of larger liner failures, as well as the increased risk of groundwater contamination since the increased volume of leachate on the liner causes it to transmit through the Landfill's liner into the environment.[18]

Additionally, on May 8, 2024, IDEQ also notified IRWS of the critical leachate issues and demanded that IRWS cease using the failing leachate storage system and make arrangement to have leachate removed from the Landfill for proper disposal, off-site. On May 21, 2024, IDEQ requested access to the Landfill to sample and remove leachate from the Landfill's leachate tanks. On June 4, 2024, IDEQ observed that leachate storage tank levels had receded from previous levels and were told that the Landfill management had instructed staff to re-commence leachate recirculation a week before. As of the filling of Mr. Beeter's supplemental declaration on June 27, 2024, IRWS has not provided IDEQ access for leachate sampling and

[17] *See Supp. Decl. Beeter*, filed June 27, 2024.

[18] "Department review of the 2021 Conceptual Site Model for Infiltration Rates to Groundwater in the area of the Landfill indicates that migration readily occurs through basalt fractures and sedimentary interbeds, and that downward migration to depths of hundreds of feet to the regional water table would be expected to occur rapidly (months rather than decades)." *Supp. Decl. Beeter*, filed June 27, 2024, ¶ 17.

system review, and the leachate continues to be managed in the failing leachate storage tanks as alleged.[19]

Although IRWS was ordered to commence closure activities and to complete such closure activities on or before May 2, 2024, to date, IRWS has not commenced any closure activities. Additionally, Mike Reno, who is a Program Manager at Idaho Central District Health, has been working with IRWS related to the ongoing issues with the Landfill. Through his involvement, he is also not aware of any efforts that IRWS has taken to remediate the current environmental issues, which he asserts pose an immediate risk to public health should they not be addressed.

4. Closure activities have not commenced, the Landfill is still in violation status.

Based upon all of the credible information presented, IRWS continues to be in violation of the Consent Order and there is no information that IRWS has actually commenced any meaningful closure activities to close the Simco Road Regional Landfill, other than minimal steps to address the violations. It is clear that the Landfill closure did not occur by May 2, 2024, and the emergent environmental issues continue to be inadequately addressed or remediated. Furthermore, the additional information presented demonstrates increased threat to the environment and the failure to properly engage in closure activities, including following the IDEQ directives regarding the Landfill's failing leachate system has increased the risk to environmental and groundwater contamination, which is also a risk to public health and the residents of Elmore County. In this context, the fines and penalties assessed against IRWS continues to accrue daily, which are significant, and IDEQ's efforts to obtain compliance from

[19] Beeter articulates that the leachate is improperly and haphazardly being recirculated to the top of the landfill, contaminating the landfill cover system and increasing the risk that leachate will enter the environment. *Supp. Decl.* June 27, 2024, ¶ 23.

current leadership of IRWS remains unproductive. IRWS also remains in default, and concedes that it has no revenue to pay the bank or the surety.[20]

5. ***IRWS's Response to Receivership.***

IRWS, Simco Venture Fund, and Valerian, as well as John Tulac, who is general counsel for IRWS, are opposed to the appointment of a receiver, and strongly oppose any action that results in a sale at a "liquidation or fire-sale price" of the Landfill. Respondents argue that a receiver is neither necessary nor appropriate under the circumstances, and assert that the Applicants are minority members who declined to participate in a capital call to raise money for the company to continue to operate and to continue litigation to oppose the shutting down of the landfill.

Respondents also assert that the CUP was revoked by the wrongful action of Elmore County, and assisted by the wrongful actions of the IDEQ, and were therefore forced to close the Landfill. They also argue that the Applicants only realized that they needed to act after Umpqua and Atlantic initiated their lawsuits against the Applicants, based upon the personal guarantees.[21] In bringing this action, which Respondents incorrectly describe as derivative in nature, they argue that the minority members have acted solely to benefit themselves by seeking the appointment of a receiver in order to sell the Landfill quickly for a price well below market value.[22] However, as explained above, the Applicants, as members of IRWS, have the ability to

[20] *See Decl. of John Tulac*, filed May 9, 2024, ¶ 8.

[21] *Id*. at ¶ 7.

[22] *See Decl. of John Tulac*, filed May 9, 2024 ¶ 9. Mr. Tulac asserts that the April 1, 2024, application was made in conjunction with an offer from Republic Storage to purchase the Landfill for $15 million dollars, which is "far below its objective market value of approximately $55 million.

apply to the Court for the appointment of a receiver and maintain a direct action against the company to enforce or protect their individual interests and/or rights. I.C. § 30-22-801.

Since IRWS has no income and is in default of Loan Nos. xxx912 and xxx773, which is not contested, Umpqua accelerated the balances due, in the amount of $10,741,511.32 and $314,206.66, respectively and initiated a lawsuit to enforce and collect upon the personal guarantees of the Applicants. IRWS's only income generating asset is the Landfill, which has not had any revenue since it was ordered to commence closure activities, yet IRWS continues to incur significant daily fines, fees and liabilities, and other penalties, which places the company in even greater financial peril.

C. Appointment of CFO Solutions, Inc. d/b/a Ampleo is Warranted.

Applicants have presented the Court with a ready, willing, and able company to be appointed as receiver. The Court heard testimony from Matthew McKinlay, who is the managing partner of Turnaround & Restructuring at CFO Solutions, LLC, d/b/a Ampleo (hereinafter "CFO Solutions"). Applicants also submitted two declarations from Mr. McKinlay, supporting his appointment.[23] Although Mr. McKinley does not have any personal experience in the solid waste-management industry, other consultants within CFO Solutions do. Consultants within CFO Solutions with whom Mr. McKinlay would have at his disposal include a consultant who has sat on the board of directors of Wasatch Integrated Waste Management Company for at least four years. Additionally, CFO Solution's consultants have participated in a large consulting

[23] The first declaration was filed on April 17, 2024, and a second was submitted on July 16, 2024. There were no objections or motions to strike the July 16, 2024, affidavit as untimely, and the Court, in its discretion, declines to do so. The parties have both submitted declarations and additional briefing past the Court's July 12, 2024, deadline, and Mr. McKinlay's supplemental declaration is in line with his testimony on cross examination that he could reach out to other consultants within CFO Solutions in regards to specific experience dealing with solid waste management. Therefore, the Court appropriately considers the supplemental declaration.

analysis for one of the three largest sold waste companies located within the United States, where they analyzed many aspects of the business including its product lines, revenue cycle, customer base, contracts, asset, billing, and operations.

Other consultants within CFO Solutions have worked at EnergySolutions, a vertically integrated service provider for more than six years, and led the financial planning and analysis accounting teams for the disposal and processing facilities, as well as acted as treasury manager who was responsible for securing capital and maintaining bonds and surety instruments. Additionally, CFO Solutions Consultants have previously consulted with a $30 million dollar medical waste removal company, and have experience with permitting, compliance, environmental, and remediation issues, and others have participated as consultants on a team that started and stabilized the Intermountain Regional Landfill that ultimately led to an acquisition by Ace Disposal.

However, during Mr. Tulac's testimony, he suggested that a viable, and less expensive alternative to appointing a receiver would be to bring in someone with the relative experience to come in and take over the management and operation of the company, specifically creating a "fractional" CFO / CEO positions and recommended Jason Saunders, whose *curriculum vitae* is set forth in Respondent's Exhibit 1, and Soeren Aarup, who has done some work with IRWS in the past. Although two interviews have been conducted previously with Mr. Saunders, who has indicated that he would be willing to come on board, compensation has not been discussed and very little information was presented in regards to Mr. Aarup or any discussions that have directly occurred with him.

After review of the application, declarations, and evidence before the court, the necessity of a receiver in this case is clear, and IRWS's financial troubles are immediate, continuing, with

no foreseeable end. Although the Respondents' argument is understandable: that Elmore County wrongfully revoked its CUP which forced IRWS to suspend operations, the fact remains here that it has no revenue to pay the bank, the surety, or others. Although IRWS has proposed a management structure change and bringing Mr. Saudners and Mr. Aarup on board, based upon their relative experience, there is no satisfactory explanation of why that did not occur after IRWS was notified by Elmore County in March 2023 about the purported violations, especially regarding the tire situation since Mr. Tulac's testimony eluded to Mr. Aarup's experience in dealing with "tires." Unfortunately, that did not occur.

At this time, it is unrefuted that IRWS's only income producing asset is unable to generate income; previous capital calls have not been successful; the loans are in default, and have been accelerated with lawsuits filed to collect thereon, including on the $2.5 million Surety Bond. IRWS's only income producing asset, the Landfill, and its sole purpose for doing business, cannot be lawfully operate or produce income. *See* Elmore County Code § 7-16-3(C). Moreover, Section 12.2(b) of IRWS's Operating Agreement provides that IRWS is dissolved upon the occurrence of any event rendering it unlawful to carry on its business operation. Although IRWS desires to continue to operate the Landfill, its federal lawsuit was dismissed with prejudice, and the company continues to face ongoing legal issues. Given the represented emergent and unaddressed environmental issues at the Landfill, including the failing leachate system, the ongoing fines and the outstanding financial obligations that are continuing, the company's trajectory and the financial peril its Members face is clear.

Accordingly, based upon the above findings and information, the Court concludes that IRWS is either already insolvent, or is in eminent danger of becoming insolvent, and finds that

the appointment of a receiver is proper in this case. In reaching this decision, the Court has applied the principles of equity and utilized its discretion in this matter.

VIII.
CONCLUSION

Based on the foregoing, the Motion for Appointment of Receiver is GRANTED and Respondents' Motions to Dismiss and/or Stay are DENIED. Therefore, and for good cause appearing therefrom;

IT IS ORDERED that CFO Solutions, LLC, d/b/a/ Ampleo is APPOINTED as Receiver over IRWS, LLC. Counsel for Applicants are hereby directed to submit to the Court an appropriate Order Appointing CFO Solutions, LLC as Receiver over IRWS, LLC, including all powers, duties, and responsibilities as authorized under Idaho Law for the Court's consideration.

IT IS SO ORDERED.

DATED this 5 day of August 2024.

8/5/2024 3:24:49 PM

Theodore J. Fleming
District Judge

CLERKS CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was sent to the following via email:

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Dated 8/5/2024 3:49:47 PM.

SHELLEY ESSL
Clerk of the District Court

By: _____
Deputy Clerk