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**PROVIDENT LAW**

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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF MARICOPA**



SIMONE GOLD, individually and  
derivatively on behalf of FREE SPEECH  
FOUNDATION, INC. d/b/a AMERICA'S  
FRONTLINE DOCTORS,

Plaintiff,

vs.

FREE SPEECH FOUNDATION, INC. d/b/a  
AMERICA'S FRONTLINE DOCTORS, an  
Arizona nonprofit corporation, JOSEPH  
GILBERT, RICHARD MACK, and JURGEN  
MATTHESIUS,

Defendants.

Case No. CV2022-015525

**REPLY IN SUPPORT OF  
DEFENDANTS' MOTION TO  
DISMISS**

(Assigned to Hon. Timothy Thomason)



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<p>FREE SPEECH FOUNDATION, INC. d/b/a AMERICA’S FRONTLINE DOCTORS, an Arizona nonprofit corporation and. JOSEPH GILBERT,</p> <p style="text-align: center;">Counter Plaintiffs,</p> <p>vs.</p> <p>SIMONE GOLD,</p> <p style="text-align: center;">Counter Defendant.</p>	
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Defendants Free Speech Foundation, Inc. d/b/a America’s Frontline Doctors (“AFLDS”), Joseph Gilbert, Richard Mack, and Jurgen Matthesius (collectively “Defendants”) submit the following reply in support of their motion to dismiss.

Plaintiff Simone Gold’s (“Plaintiff” or “Gold”) Response to the Defendants’ Motion to Dismiss (“Response”) argues the same narrative that was presented to the Court during a full day of testimony on January 25, 2023. In the words of the Court: “The narrative that Gold has provided about her resignation is false.” (Ex. A, Jan. 30, 2023 Minute Entry at 15). This Court has found that Gold “clearly,” “unequivocally,” and “unconditionally” resigned on February 2, 2022, and has not been a director at any time. (Id. at 15, 17).

Accordingly, the arguments presented by Gold in her Response are moot. There is no genuine issue of material fact regarding Gold’s status as a director. And since Gold is not a director, she lacks standing to bring her derivative claims under A.R.S. § 10-3810(A).<sup>1</sup>

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<sup>1</sup> Although the findings of the Court are outside the allegations in the Complaint, the Court should dismiss her claims in their entirety or grant summary judgment in favor of the Defendants under Ariz. R. Civ. P. 12(d) and 56.



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**ARGUMENT**

All of Gold’s claims rely on her status as an AFLDS director. Her first claim specifically asks the Court for declaratory judgment recognizing this status. Her second claim under A.R.S. § 10-3810 requires that Gold be a director to have standing.

**I. Gold’s arguments regarding her status as an AFLDS director are moot.**

As part of Gold’s narrative regarding her status as an AFLDS director, she raises three theories. First, she argues that her resignation was never effective because it was not in writing. Second, she argues that her resignation was part of an alleged “resignation agreement” whereby payments of \$50,000 per month and a \$1.5 million lump sum were conditions precedent to her resignation. Finally, she argues that the Defendants breached the alleged resignation agreement and that she rescinded the agreement.

The Court has made clear findings of fact that Gold has not been a director of AFLDS since she “clearly and unequivocally resigned from the Board” on February 2, 2022. (Jan. 30, 2023 Minute Order, at 17). On Gold’s first theory, the Court found that her arguments that she never resigned because her resignation was not in writing is “absurd” and “ridiculous.” (Id. at 18). On Gold’s second and third theories, the Court found her claims that her resignation was part of an agreement to be paid \$1.5 million in cash and an additional \$50,000 per month were “not true.” (Id. at 15). There was “simply no evidence” of an agreement to pay Gold \$1.5 million for her resignation. (Id.). This payment “was clearly not a condition to her resignation.” (Id.) The evidence “clearly show[s] that Gold resigned from the Board unconditionally.” (Id.)

Thus, all the arguments in Gold’s Response are moot. There is no genuine issue of material fact that Gold is not a director of AFLDS. The Defendants’ request that the Court dismiss Gold’s claims or, alternatively, consider its findings of fact in its January 30, 2023

1 minute order and grant summary judgment in favor of the Defendants on all of Gold’s claims.<sup>2</sup>

2 **II. As Gold is not an AFLDS Director, she lacks standing to bring her claim for**  
3 **judicial removal of directors under A.R.S. § 10-3810.**

4 A claim for judicial removal of directors under A.R.S. § 10-3810 can only be brought  
5 “by the corporation or by its members holding at least twenty-five per cent of the voting power  
6 of any class.” A.R.S. § 10-3810(A). The statute defines “member” as “without regard to what  
7 a person is called in the articles of incorporation or bylaws, any person or persons who,  
8 pursuant to a provision of a corporation’s articles of incorporation or bylaws, have the right  
9 to vote for the election of a director or directors.” A.R.S. § 10-3140(37). Gold has alleged she  
10 has standing to assert this claim as a director.  
11

12 As outlined above, the Court has found that Gold has not been a director of AFLDS  
13 since February 2, 2022. Therefore, Gold does not meet the standing requirements of A.R.S. §  
14 10-3810 to bring a claim for judicial removal of directors. This claim should be dismissed  
15 with prejudice or, alternatively, summary judgment granted in favor of the Defendants on this  
16 claim.

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25 <sup>2</sup> The Court is permitted to consider matters outside the pleadings on a Rule 12(b)(6) motion if it is treated as  
26 a motion for summary judgment under Rule 56. Ariz. R. Civ. P. 12(d). The Defendants invite the Court to  
do so as they believe this is the most efficient means of resolving these claims. The Plaintiff has been  
provided reasonable opportunity to present all the material pertinent to the issue of Gold’s status as a  
director.



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**CONCLUSION**

The Court’s findings of fact that Gold is not a director of AFLDS is determinative of both of her claims. The Defendants respectfully request, for the reasons set forth in Defendants’ Motion to Dismiss and this Reply in Support, that all of Gold’s claims be dismissed with prejudice or, alternatively, that summary judgment be granted in favor of the Defendants on all of Gold’s claims under Civ. R. 12(d) and 56.

**RESPECTFULLY SUBMITTED** this 3rd day of February 2023.

**PROVIDENT LAW®**

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COPY efiled with AZTurboCourt  
this 3rd day of February 2023.

COPIES served as indicated below  
this 3rd day of February 2023, to:

Honorable Timothy Thomason  
Maricopa County Superior Court

[AZTurboCourt]



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