



PROVIDENT LAW

Timothy J. Watson, SBN 018685
Erik W. Stanley, SBN 030961
Christopher J. Charles, SBN 023148
14646 N. Kierland Boulevard, Suite 230
Scottsdale, Arizona 85254
Telephone: (480) 388-3343
Facsimile: (602) 753-1270
For E-Service and Court Use Only: fileclerk@providentlawyers.com
Attorneys for Defendants

IN THE SUPERIOR COURT IN THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

SIMONE GOLD, M.D., both in her individual capacity and as a director on behalf of Free Speech Foundation d/b/a America’s Frontline Doctors, an Arizona nonprofit corporation,

Plaintiff,

v.

JOSEPH “JOEY” GILBERT, an individual; JURGEN MATTHESIUS, an individual; RICHARD MACK, an individual; and FREE SPEECH FOUNDATION d/b/a AMERICA’S FRONTLINE DOCTORS, an Arizona nonprofit corporation, in a derivative capacity,

Defendants.

Case No. CV2022-015525

**APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND
PRELIMINARY INJUNCTION**

(with Notice)

(Assigned to the Hon. Timothy Thomason)



PROVIDENT LAW

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1 Pursuant to Ariz. R. Civ. P. 65, Defendants Joseph “Joey” Gilbert, Jurgen Matthesius,
2 Richard Mack, and Free Speech Foundation d/b/a America’s Frontline Doctors (“AFLDS”),
3 (collectively “Defendants”) now move the Court for injunctive relief to protect Defendants
4 and specifically, AFLDS, from the actions of Plaintiff Simone Gold (“Gold”). Since
5 approximately March of 2022, Gold has: (1) interfered with AFLDS operations, (2) hindered
6 management efforts of the AFLDS Board of Directors and, (3) improperly caused banks to
7 restrict the withdrawal of AFLDS funds. This Application is supported by the following:

- 8 1. Verified Complaint.
- 9 2. Declaration of Board Chairman, Joseph Gilbert.

10 The Court has already set an evidentiary hearing to occur on: January 25, 2023
11 concerning Plaintiff Gold’s Application for injunctive relief and therefore, Defendants
12 respectfully request that if the Court does not grant their request for injunctive relief by
13 Temporary Restraining Order, that their claims for injunctive relief be heard at that
14 evidentiary hearing.

15 INTRODUCTION

16 This case arises from Gold’s desperate and groundless attempt to wrest control of
17 AFLDS from its duly elected board of directors (the “Board”). The Board consists of
18 Defendants Joseph Gilbert, Pastor Jurgen Matthesius, and Sheriff Richard Mack. As detailed
19 below, Plaintiff unequivocally resigned from the AFLDS Board on February 2, 2022, as
20 reflected in Board meeting minutes (see Board Minutes, attached hereto as **Exhibit A**).

21 Defendants have filed an Answer to Verified Complaint and Counterclaim
22 simultaneous with this application that seeks to prevent AFLDS’ Gold, who has not been a
23 director, officer, or employee of AFLDS since early 2022 from gaining access and use of
24 charitable funds for her own personal benefit and from trying to illegally and fraudulently
25 wrest control away from AFLDS’ rightful Board of Directors. Specifically, Gold has used
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1 AFLDS charitable funds to purchase a \$3.6 million home in Naples, Florida for her personal
2 rent-free use, and at least three luxury vehicles and has otherwise used AFLDS funds to
3 resource her personal lifestyle and expenses since she formed AFLDS. Further, over the last
4 several weeks, despite having no director, officer, or employee role with the organization,
5 Gold has interfered with AFLDS’ operations, funds, donor relationships, employee
6 relationships, converted and improperly asserted control over AFLDS information
7 technology, bank accounts, money and resources, defamed and disparaged the Board
8 Chairman Mr. Gilbert and others associated with ALFDS, misused and misappropriated
9 AFLDS’ registered trademarks, and fraudulently held herself out at a representative, officer,
10 and director of AFLDS to AFLDS staff, AFLDS donors, and the public. As shown below,
11 Gold’s wrongful, unauthorized conduct, threatening AFLDS ability to operate, has continued
12 even through the filing of this Application.

13 Gold’s conduct has caused and is likely to cause further irreparable harm to Plaintiffs
14 for which there is no adequate remedy at law. Further, Plaintiffs have a substantial likelihood
15 of success on the merits of their claims. And given that AFLDS is a public charity,
16 considerations of the public interest weigh heavily in favor of the Court granting the relief
17 AFLDS is seeking. Under these circumstances, a temporary restraining order is required.

18 FACTUAL BACKGROUND

19 Gold incorporated ALFDS in June 2020 under the Arizona Nonprofit Corporation Act
20 “exclusively for charitable purposes,” and specifically “to perform, every act or acts
21 necessary, incidental to or connected with the furtherance of its charitable, scientific, literary,
22 religious, and educational purposes, with a focus on educating the public on the enduring
23 importance of the Bill of Rights to America’s history and civic traditions.” (See, Declaration
24 of Chairman of the AFLDS Board of Directors, Joseph Gilbert, attached hereto as **Exhibit B**,
25 at ¶ 3). AFLDS is currently governed and always has been governed by a Board of Directors.

1 From September 2020 through January 2022, Gold was a director and the executive
2 director of AFLDS. *Id.*, ¶ 4. In her role as executive director, Gold authorized the hiring of
3 employees, developed and supervised AFLDS’ charitable programs, developed and managed
4 partnerships with other organizations, oversaw fundraising activities, and oversaw
5 communications with program participants, government officials, and the general public. *Id.*,
6 at ¶ 5. Plaintiff Joseph Gilbert is the AFLDS Chairman of the Board, Chief Operating Officer,
7 and Director of Strategy. *Id.* at ¶ 2. AFLDS has two other current board members – Jurgen
8 Matthesius and Richard Mack.

9 **I. Gold Misused AFLDS’ Charitable Funds**

10 As set forth in the Verified Complaint, beginning at least as early as 2021, Gold began
11 misusing AFLDS’ funds for her own personal use and those in her circle. For example, she
12 purchased a \$3,600,000 home in Naples, Florida (the “Naples Home”) using AFLDS funds
13 (see, **Exhibit B**, at ¶ 6). She also rented a home for her friends, her personal assistant and
14 security guard (employees of AFLDS) all without authorization or approval of the Board of
15 Directors. *Id.* Gold currently lives in the Naples home with John Strand rent free and her
16 friends live in the other home rent free. *Id.* Gold pays a personal housekeeper over \$5,000 a
17 month and a personal security officer \$12,000 a month (all with AFLDS funds). *Id.* For
18 months, she has spent \$50,000 per month on AFLDS credit cards for her own personal
19 expenses. *Id.*

20 Gold also purchased three vehicles including a Mercedes Benz Sprinter van, a Hyundai
21 Genesis, and a GMC Denali, using AFLDS funds for her own personal transportation needs.
22 *Id.* at ¶ 7. On at least two occasions, Gold flew on private planes using AFLDS funds without
23 approval or authorization from the Board of Directors. *Id.* at ¶ 8. One of those trips exceeded
24 \$100,000. *Id.*

1 **II. Gold Resigned from the AFLDS Board of Directors and as Executive**
2 **Director**

3 On February 2, 2022, at an AFLDS Board of Directors meeting, Gold resigned from
4 AFLDS’ Board so that she could devote time and energy to her vision of opening health and
5 wellness centers nation-wide. *Id.* at ¶ 9. The Board unanimously voted to accept Gold’s
6 resignation, voted Mr. Gilbert into the Chairman position, Amy Landau as the Executive
7 Director, and the remaining board members as Jurgen Matthesius, and Richard Mack. *Id.* A
8 copy of the Minutes of the meeting of the AFLDS Board of Directors is attached hereto as
9 **Exhibit A.**

10 The evidence that Defendant Gold resigned from the AFLDS Board is unmistakable.
11 For example, in an e-mail that Gold wrote to Plaintiff Gilbert on March 12, 2022, Gold
12 confirmed she had resigned when she stated “In my role as marketing consultant for AFLDS,
13 as well as the Founder of AFLDS” and stated “I would like to ask the Chairman of the Board
14 of AFLDS,” and “[a]s marketing consultant, I no longer have the authority to solve this issue.”
15 A copy of this correspondence is attached hereto as **Exhibit C.** Two months later, on or about
16 May 22, 2022, Gold posted a comment on an email to AFLDS’ inside and outside counsel in
17 which she commented that she was no longer on the AFLDS Board. “I am not the Chairman
18 of the Board – have not been on the Board for many months. I am not sure why this is
19 incorrect.” A copy of Dr. Gold’s email dated May 22, 2022, with the referenced comment is
20 attached hereto as **Exhibit D.** This statement from Defendant Gold was in response to
21 information needed for her criminal pre-sentencing report, in connection with her January 6,
22 2022 appearance at the U.S. Capitol.

23 Returning to the February 2, 2022 Board meeting: Discussion was held about Gold
24 and AFLDS entering into a consulting agreement so that Gold could continue as the “face”
25 of AFLDS and using her marketing skills to raise money for AFLDS. **Exhibit B**, at ¶ 10. The
26 Board voted to have Mr. Gilbert negotiate the consulting agreement with Gold. *Id.* During the

1 negotiations of the consulting agreement, Gold sought from AFLDS a “signing bonus” of
2 \$1.5 million and \$50,000 monthly as a consulting fee. *Id.* at ¶ 21. Under that agreement,
3 GoldCare (discussed below) was also to be granted, at no cost, private workspace and
4 accommodations at the Naples Home. *Id.*

5 In keeping with such consulting agreement, she created a for-profit business called
6 GoldCare Marketing Services LLC (“GoldCare”) to pursue the creation of health and
7 wellness centers. *Id.* at ¶ 11. After doing so, through her influence, Gold began diverting
8 numerous AFLDS employees who were paid by AFLDS to work at GoldCare, using
9 AFLDS’s charitable resources to pay their business salaries – and with them doing little to no
10 work for AFLDS. *Id.*

11 **III. Gold Has Tortiously Interfered with AFLDS’ Relationships and Illegally**
12 **Attempted to and Has Seized Control of the Organization.**

13 On June 22, 2022, Gold was sentenced to serve 60 days in federal prison after pleading
14 guilty to a misdemeanor charge of unlawfully entering and remaining in a restricted area of
15 the U.S. Capitol on January 6, 2022. **Exhibit B**, at ¶ 12. While Gold served her prison
16 sentence, Plaintiff Joseph Gilbert, the Board Chairman and Director of Strategy, stepped into
17 day-to-day operations to help AFLDS run smoothly during Gold’s absence. *Id.* at ¶ 13 . By
18 that time, the Board had become aware of Gold’s uses of AFLDS’ funds and hired a forensic
19 auditor, obtained a compensation study, and had its outside accounting firm begin a financial
20 audit in order to determine what next steps should be taken with regard to Gold’s use of
21 AFLDS funds for her personal use. *Id.*

22 Gold was released from prison on September 9, 2022 and continues to be under
23 supervised release. *Id.* at ¶ 14. Upon Gold’s release, Mr. Gilbert, as Chairman of the AFLDS
24 Board, advised Gold of the steps the Board had taken in her absence to look into her use of
25 charitable funds for personal purposes and the steps it would need to take as a result, for
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1 corrective action both for AFLDS’s and her own good in light of AFLDS’s charitable nature.
2 *Id.* at ¶ 15. Although Gold feigned understanding and acceptance of the steps AFLDS would
3 need to take, it became evident shortly thereafter that Gold would do anything but accept what
4 was in the best interests of AFLDS, its donors, employees, and mission. *Id.* Gold wanted to
5 take back control of AFLDS and restore herself into a leadership role with the organization.
6 Indeed, even though she had no role other than as a consultant, Gold began directing AFLDS
7 employees in different ways in attempts to learn information and seize control. *Id.* at ¶ 16.
8 She could have asked to be elected back to the Board, but she never did.

9 Instead, on October 4, 2022, Gold sent an email addressed to “the AFLDS Board of
10 Directors,” identifying Pastor Jurgen Matthesius and Richard Mack, in which she alleged that
11 the third Board Member, Plaintiff Mr. Gilbert, had engaged in wrongdoing in his role with
12 AFLDS. **Exhibit B**, at ¶ 17. In that email, Gold demanded that the Board take certain steps
13 to essentially remove Mr. Gilbert from the Board and investigate her allegations. *Id.* The
14 Board responded to Gold’s allegations by retaining counsel to investigate her allegations
15 thoroughly. *Id.* at ¶ 18. However, as soon as this investigation began, Gold began threatening
16 the Board, AFLDS’ counsel, and employees that she would interfere with AFLDS donors, to
17 persuade them not to make donations to AFLDS if her demands were not met. *Id.* at ¶ 19.
18 During this time, Gold continued to participate in speaking engagements representing AFLDS
19 in public forums. *Id.* at ¶ 20. AFLDS representatives learned that Gold falsely told donors
20 that Mr. Gilbert had engaged in financial improprieties, ethical violations, and corruption. *Id.*

21 Beginning in October 2022, Gold has interfered with, sought to seize control of, and
22 has ultimately improperly taken control of AFLDS in the following manner and by the
23 following actions:

- 24 • On October 12, 2022, Gold sent the Executive Director and her personal
25 assistant, Lisa Andrzejewski, to a Board meeting to read a demand letter by
26 Gold that each member of the Board resign immediately. That letter also

1 threatened each Board Member with litigation and exposure “by name and
2 location to the public” if they did not immediately resign from their
positions as board members. **Exhibit B**, at ¶21.

- 3 • In response to requests that Gold refrain from disparaging board members
4 or discussing her allegations or the investigation into those allegations with
5 donors, Gold advised AFLDS’ counsel, among other things, that she would
6 do what she needed to do and that AFLDS donors she had been in touch
7 with are “aware that their monies, which they donated for specific reasons I
8 promised to guard, are at risk.” She also stated that whether she disparaged
9 Mr. Gilbert in public depended upon him resigning from his position on the
10 Board. A copy of this correspondence is attached as **Exhibit E**.
- 11 • On October 31, 2022, without the authorization of the Board, Gold sent a
12 letter on AFLDS’ letterhead, fraudulently signing her name as the
13 “Chairman and President of Free Speech Foundation” through which
14 AFLDS operates as a d/b/a, to Mr. Gilbert asserting that he had committed
15 ethical violations and that he was recused from the Board. A copy of this
16 correspondence is attached hereto as **Exhibit F**.
- 17 • On October 31, 2022, without the authorization of the Board, Gold caused a
18 2022 Annual Report to be filed with the Arizona Corporation Commission,
19 in which she represented herself to be “CEO and Chairman of the Board of
20 Directors of Free Speech Foundation, through which AFLDS operates as a
21 d/b/a, A copy of this 2022 Annual Report is attached hereto as **Exhibit G**.
- 22 • On November 1, 2022, without the authorization of the Board, Gold sent a
23 letter on AFLDS letterhead, fraudulently signing her name as the “Chairman
24 and President of AFLDS,” to AFLDS outside counsel, Wagenmaker &
25 Oberly, purported to terminate its representation of AFLDS. A copy of this
26 correspondence is attached hereto as **Exhibit H**.
- On November 1, 2022, without the authorization of the Board, Gold sent a
letter to the AFLDS employees which, among other things, accused Mr.
Gilbert of “improper financial dealings” and falsely asserted that she was the
Chairman and President of AFLDS. A copy of this correspondence is
attached hereto as **Exhibit I**.
- On November 2, 2022, without the authorization of the Board, Gold entered
the Microsoft Teams application used by ALFDS employees and advised the

1 employees falsely, among other things, that she was the “legitimate
2 Chairman of the Board and President” and that Mr. Gilbert had been recused
3 from the Board and no authority to act on behalf of AFLDS. She also advised
4 that employees were not to take any orders other than from her, the President
5 or from the Executive Director Lisa Andrsejewski (whose employment had
6 been terminated by the AFLDS Board). A copy of this correspondence is
7 attached hereto as **Exhibit J**.

- 8 • On November 2, 2022, without the authorization of the Board, Gold advised
9 AFLDS’ treasurer not to abide by directions from the Board of Directors
10 regarding funds or the entity’s bank accounts and payments. **Exhibit B**, at ¶
11 21. AFLDS’ treasurer is Troy Brewer, CPA. In his email message to Gilbert
12 and AFLDS General Counsel, attached hereto as **Exhibit K**, Brewer advised
13 that he could not transfer funds from an AFLDS account, notwithstanding
14 calls to the Bank, because Gold is the only authorized person. Additionally,
15 Treasurer Brewer has refused to abide the instructions of the Board or the
16 Executive Director, stating he is conflicted and does not know to whom he
17 should listen.
- 18 • On November 2, 2022, without the authorization of the Board, Gold directed
19 AFLDS employees to seize control of AFLDS’ electronic mail, website
20 domain name systems (“DNS”), and other electronic databases, and lock
21 certain employees out of these systems. **Exhibit B**, at ¶ 21.
- 22 • On November 3, 2022, without the authorization of the Board, Gold
23 purportedly on behalf of AFLDS, and identifying herself as the “Chairman
24 and President of AFLDS,” released a press release that reported she had
25 “resumed” her role as Chairman and President of AFLDS and repeated
26 Gold’s allegations against Mr. Gilbert that she announced to the AFLDS
employees A copy of this press release is attached hereto as **Exhibit L**.
- On November 3, 2022, without the authorization of the Board, Gold sent a
letter on AFLDS letterhead, signing her name as the “Chairman and
President of AFLDS,” to AFLDS’ in-house counsel advising her that she was
suspended without pay for violating Gold’s order that AFLDS employees
disregard requests from the Board. A copy of this correspondence is attached
hereto as **Exhibit M**.
- On November 3, 2022, without the authorization of the Board, Gold sent a
letter on AFLDS letterhead, signing her name as the “Chairman and

1 President of Free Speech Foundation” through which AFLDS operates as a
2 d/b/a, to Gilbert purporting to terminate his position with AFLDS, and
3 asserting her own role as “Founder, current Chairman of the Board and
4 current President of the Free Speech Foundation and of America’s Frontline
5 Doctors.” A copy of this correspondence is attached hereto as **Exhibit N**.

- 6 • On November 4, 2022, one of AFLDS’ employees wrote an email to Plaintiff
7 Gilbert, the subject of which was “AFLDS Takeover,” in which he informed
8 Mr. Gilbert that Defendant Gold’s Executive Assistant at GoldCare had
9 attempted to take over AFLDS’ “entire Microsoft tenant, and we’ll lose
10 complete access to all of it [i.e., organizational emails and related
11 communications] . . . unless the legal team interjects.”¹ A copy of this
12 correspondence is attached hereto as **Exhibit O**.
- 13 • On November 7, 2022, without the authorization of the Board, Gold sent a
14 letter on AFLDS letterhead, signing her name as the Chairman and President
15 of Free Speech Foundation, through which AFLDS operates as a d/b/a, to
16 AFDS’ employees, the subject of which was “Memorandum of Confirmed
17 Leadership and Terminated Persons,” in which she advised the employees to
18 ignore communications from Plaintiff Gilbert, the Chairman of the Board of
19 AFLS, Lauren Bradford, the general counsel for ALFDS, and others. A copy
20 of this correspondence is attached hereto as **Exhibit P**.
- 21 • On November 30, 2022, without authorization of the Board, Gold failed to
22 pay various AFLDS employees who continue to work on AFLDS’ behalf to
23 forward its charitable purposes. **Exhibit B**, ¶ 21.
- 24 • On or around December 18, 2022, after the Court in this matter denied her
25 motion for a temporary restraining order that sought to have her identified as
26 a member of the AFLDS Board, Gold or someone at her direction, persuaded
Chase bank to freeze AFLDS’ bank account as a way of trying to prevent
AFLDS from paying its employees. **Exhibit B**, ¶ 21.

¹ “A Microsoft 365 tenant is a dedicated instance of the services of Microsoft 365 and your organization data stored within a specific default location.”
<https://learn.microsoft.com/en-us/microsoft-365/solutions/tenant-management-overview?view=o365-worldwide> (last visited on November 8, 2022).

1 Furthermore, Gold has focused her vitriol on Gilbert’s activities that are separate from
2 AFLDS. On November 7, 2022, Mr. Gilbert learned that Gold’s personal assistant, Lisa
3 Andrzejewski, made allegations of purported financial improprieties concerning transactions
4 with AFLDS to the media outlet through which, until Gold’s assistant defamed him, Gilbert
5 broadcast a podcast on a weekly, or more frequent, basis. A copy of correspondence to Gilbert
6 from counsel for American Media Periscope is attached hereto as **Exhibit Q**.
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8 Gold’s false statements regarding her authority and her false statements concerning
9 Gilbert, the rightful Chairman of the Board, have served to confuse, intimidate staff, causing
10 them to quit. For example, on November 7, 2022, the Client Services Manager and
11 Billing/Donation Coordinator resigned “due to the infighting and accusations of
12 misappropriation of AFLDS donation funds.” This former employee elaborated
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14 [d]ue to the accusations of mishandled funds, and the rumors of
15 bullying and threats of termination, I no longer in good
16 conscience can be associated with this organization. We have
17 been pitted against each other and have been indirectly asked to
18 pick a side. I have lost trust in the whole organization and don’t
19 know who to trust or believe. . . . The hard-working people at
20 AFLDS have been kept in the dark about people being terminated
and who are in leadership positions, not to mention the rumors of
leadership positions being paid absurd amounts of money for
salaries.

21 A copy of this employee’s resignation letter is attached hereto as **Exhibit R**. Reflecting upon
22 the services the American people are asking for from AFLDS, this employee lamented that
23 all she is doing under the current circumstances is cancelling donors’ charitable contributions.
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1 “I don’t feel that at this point we are providing any of those services, except I am able to help
2 people cancel their donations.” *Id.*

3 **ARGUMENT**

4 Plaintiffs seek a temporary restraining order to prevent Gold from taking further
5 actions that will cause irreparable damage to AFLDS, a Section 501(c)(3) charitable
6 organization. In Arizona, a preliminary injunction is proper when: (1) the party seeking the
7 injunction has a strong likelihood of success on the merits at trial; (2) there is a possibility of
8 irreparable injury not remediable by damages if the injunction is not issued; (3) the balance
9 of hardships favors the party seeking the injunction; and (4) public policy favors the
10 injunction. *Shoen v. Shoen*, 167 Ariz. 58, 63 (App. 1990). To “meet this burden, the moving
11 party may establish either 1) probable success on the merits and the possibility of irreparable
12 injury; or 2) the presence of serious questions and the balance of hardships tip sharply in [the
13 party’s] favor.” *Id.* (internal quotation marks omitted). Here, either standard merits issuance
14 of the requested injunction. In addition, even if the harm complained of is occasional,
15 injunctive relief can be granted. *McQuade v. Tucson Tiller Apartments, Ltd.*, 25 Ariz. App.
16 312, 314 (1975) (“The fact that the injury is only occasional does not prevent an injunction.”).
17 In the present case, the injury has been and will continue to be inflicted on AFLDS and the
18 Board because of Gold’s ongoing efforts to disrupt operations and seize control of the
19 organization for her own purposes (ie.. her own personal enrichment).

20 **I. Plaintiffs’ Claims Are Substantially Likely to Succeed on the Merits.**

21 In their Counterclaim, Defendants have asserted claims for fraud, conversion, tortious
22 interference, breaches of fiduciary duty, and defamation. As set forth in the factual section
23 above, Gold’s actions permit Plaintiffs to meet the elements of each of these claims.

24 **A. Fraud**

25 A fraud claim can be established if Plaintiffs prove Gold:
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1. Made a representation to the Board and AFLDS;
2. The representation was false;
3. The representation was material, which means that it was sufficiently important to influence a reasonable person's actions;
4. Knowing that the representation was false;
5. Gold intended that the Board or AFLDS would act upon the representation in the manner reasonably contemplated ;
6. The Board and AFLDS did not know that the representation was false;
7. The Board and AFLDS relied on the truth of the representation;
8. The Board and AFLDS' reliance was reasonable and justified under the circumstances; and
9. As a result, the Board and / or AFLDS was damaged.

See, *Echols v. Beauty Built Homes, Inc.*, 132 Ariz. 498 (1982); *Staheli v. Kauffman*, 122 Ariz. 380 (1979); see also, RAJI (Civil) Commercial Torts, 24 (7th ed.). Plaintiffs are likely to succeed on the merits of their fraud claim because the public and private record are clear: Gold has held herself out – in speeches, letters, and notifications – as the Chairman of the Board and President of AFLDS. These statements are demonstrably false based on board meeting minutes and other documents in Plaintiffs’ possession. Gold made these false statements, among others, in order to get AFLDS staff to take steps on her behalf instead of actions on behalf of the organization itself and its rightful Board in her ongoing attempts to take over AFLDS. AFLDS has been harmed by Gold’s false statements because employees have been intimidated by her and refused to take direction from the rightful Board, causing certain employees to quit their jobs and others to refuse to do their jobs in fear. These actions have paralyzed AFLDS’ mission.

1 **B. Conversion**

2 Conversion is an intentional tort concerning the interference with the control of
3 personal property. In Arizona, Conversion “is an intentional exercise of dominion or control
4 over a chattel which so seriously interferes with the right of another to control it that the actor
5 may justly be required to pay the other the full value of the chattel.” *Miller v. Hehlen*, 209
6 Ariz. 462, 472 (Ct. App. 2005); citing, *Focal Point, Inc. v. U-Haul Co. of Ariz.*, 155 Ariz.
7 318, 319 (App.1986); Restatement (Second) of Torts § 222A(2).

8 As discussed above, Gold has wrongfully asserted dominion over AFLDS’ employees,
9 resources, funds, business relationships, information technology, and donor relationships. She
10 has used AFLDS funds to finance her personal life by, among other things, buying a \$3.6
11 million home, three luxury vehicles, private services, and flying on private jets. Gold has
12 directed employees not to listen to the Board and to take direction from her, including her
13 instructions s not to disperse ALFDS funds. Gold has wrongfully taken over the information
14 technology services and removed access to those services to the Board of Directors and
15 AFLDS staff members. Gold has advised donors not to donate to AFLDS. None of these
16 belongs to her personally and her exercise of dominion over them is inconsistent with the fact
17 that she is not a director, officer, or employee of AFLDS and has no authority to assert control
18 over AFLDS’ property. Based on the evidence AFLDS has already accumulated, as set forth
19 in its Verified Complaint and this Motion, it is likely to succeed on the merits of this claim.

20 **C. Tortious Interference with Contract**

21 To establish a claim for tortious interference with a contract or business relationship
22 in Arizona, the plaintiff must establish the following elements: “4 To succeed on a claim of
23 tortious interference with contract, a plaintiff must prove: “(1) the existence of a valid
24 contractual relationship; (2) knowledge of the relationship on the part of the interfer[e]r; (3)
25 intentional interference inducing or causing a breach; (4) resultant damage to the party whose
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1 relationship has been disrupted; and (5) that the defendant acted improperly.” *Tortolita*
2 *Veterinary Servs., PC v. Rodden*, 252 Ariz. 96, 104 (Ct. App. 2021), review denied (Jan. 4,
3 2022); see also, *ABCDW LLC v. Banning*, 241 Ariz. 427, ¶ 37 (App. 2016).

4 Defendants Plaintiffs have alleged in the counterclaims, Gold has tortiously interfered
5 with multiple current relationships between AFLDS and its employees, donors, and
6 prospective donors. As an example, AFLDS employs an individual in a financial role to
7 handle AFLDS’ finances, payroll, and other financial matters including relationships with
8 banks. Gold is aware of this employee’s relationship with AFLDS. In the last two weeks,
9 Gold has advised this employee that she should not take direction from the Board of Directors
10 and should only follow her instructions when it comes to the release of funds, communication
11 with banks, and payment of employees. *See* Exhibit 18. These actions have caused AFLDS
12 not to be able to disperse funds as needed or secure its funds. Gold has no authority to direct
13 this employee or any other employee. She is not a director, and officer, or an employee of
14 AFLDS. Based on her actions, AFLDS is likely to succeed on its claim for tortious
15 interference with its employment relationships.

16 Similarly, Gold has directed an employee of her limited liability company, Gold Care,
17 to submit a ticket to Microsoft on behalf of AFLDS in order to make changes to AFLDS’
18 information technology and email systems. Gold knows AFLDS has a business relationship
19 with Microsoft, a third-party vendor, and has taken intentional steps to interfere with that
20 relationship to the detriment of AFLDS’ mission and purpose as well as donors. AFLDS is
21 likely to succeed on its claim for tortious interference with business relationships.

22 **D. Breaches of Fiduciary Duty**

23 A “fiduciary relation exists between two persons when one of them is under a duty to
24 act for or to give advice for the benefit of another upon matters within the scope of the
25 relation.” *Sports Imaging of Arizona, L.L.C. v. 1993 CKC Tr.*, No. 1 CA-CV 05-0205, 2008
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1 WL 4448063, at *17 (Ariz. Ct. App. Sept. 30, 2008). A claim for a breach of a fiduciary duty
2 requires a breach of the duty within that relationship and that the breach was a cause of the
3 claimant's damages. *Id.* at 17. A breach of fiduciary duty is a cause of damages if it helps
4 produce the damages and if the damages would not have occurred without the breach. *Id.* See
5 also, RAJI (Civil) 7th - Commercial Torts, 2-3; see also, Restatement (Second) of Torts § 874
6 comment b and § 924; Restatement (Second) of Agency §§ 403, 404, 404A.

7 Here, Gold owed fiduciary duties of care, loyalty, and obedience to AFLDS.
8 Notwithstanding these duties, Gold engaged in numerous excess benefits transactions in
9 violation of Internal Revenue Code §§ 501(c)(3) and 4958. In so doing, Gold engaged in
10 corporate waste and self-dealing. As fully described elsewhere, Gold bought homes, cars,
11 plane rides, and personal services with AFLDS' charitable funds without the authorization of
12 the Board, which both wasted AFLDS' funds and put AFLDS at risk for penalties under the
13 Internal Revenue Code. Based on Gold's actions, AFLDS' is likely to succeed on the merits
14 of its claims for breaches of fiduciary duty.

15 **E. Defamation**

16 Counterclaimants asserted a claim for defamation against Gold. In Arizona, the
17 defamation of a private figure requires five elements:

- 18 1. The Defendant made, said, or wrote a defamatory statement of fact about the
19 Plaintiff;
 - 20 2. The statement was false;
 - 21 3. The Defendant made, said, or wrote the statement to a third person;
 - 22 4. The Defendant was negligent in failing to determine the truth of the statement;
23 and
 - 24 5. The Defendant's statement caused the Plaintiff to be damaged.
- 25
26

1 *Peagler v. Phoenix Newspapers, Inc.*, 114 Ariz. 309 (1977); see also, Arizona Pattern Jury
2 Instruction, (Civil) Defamation 1B (7th ed). Here, Gold sent letters to AFLDS staff and
3 released a press release purportedly on behalf of AFLDS publishing false statements about
4 Mr. Gilbert, which has caused Mr. Gilbert great reputational harm inside of AFLDS and in
5 the public realm. In Gold’s letter to employees dated November 1, 2022, she stated that “Joey
6 Gilbert has repeatedly acted unethically, exhibiting a clear and longstanding patter of
7 inappropriate and damaging behavior. The violations are severe, including numerous
8 financial dealings, all while he is publicly threatening all of you – the people who do the work
9 – with pay cuts and termination.” **Ex. C.** On November 2, 2022, Gold sent a second letter to
10 employees stating that “Mr. Gilbert has been recused from his role on the Board of Directors
11 pending an internal investigation to review documented allegations filed against him.
12 Effective immediately he has absolutely no authority to communicate directives or
13 instructions of any kind to anyone working or volunteering at AFLDS.” A copy of Gold’s
14 November 2, 2022 letter is attached hereto as **Exhibit D.**

15 On November 3, 2022, Gold issued a press release, purportedly on AFLDS’ behalf in
16 which she falsely stated that Gilbert had “repeatedly acted unethically, exhibiting a clear
17 pattern of inappropriate and damaging behavior...including numerous instances of self-
18 dealing and threats made to employees of financial retaliation and termination if they failed
19 to comply with his demands.” (*see*, **Exhibit L**)

20 Gold’s malicious interference has extended beyond Gilbert’s activities on behalf of
21 AFLDS. On November 7, 2022, Mr. Gilbert learned that Gold’s personal assistant, Lisa
22 Andrzejewski, made allegations of purported financial improprieties concerning transactions
23 with AFLDS to the media outlet through which, until Gold’s assistant defamed him, Gilbert
24 broadcast a podcast on a weekly, or more frequent, basis.

1 These statements were knowingly false and each of them has caused Gilbert
2 reputational harm. Based on these facts, Gilbert is likely to succeed on the merits of his claim
3 for defamation.

4 **II. A Temporary Restraining Order Is Necessary to Prevent Irreparable Injury.**

5 The full extent of the harm Gold has caused AFLDS is not yet known because she
6 continues to operate clandestinely through staff and other third parties. What AFLDS knows
7 at this point, however, is that employees are leaving, Gold has gotten into and taken over the
8 information technology systems, donors and vendors are afraid to engage with AFLDS due
9 to Gold’s conduct and the information she has published about Gilbert and the organization.
10 She has also prevented AFLDS from distributing monies, and has issued a false press release.
11 Gold continues to undermine and sabotage AFLDS’ operations, and causes great disruption,
12 confusion, and fear among employees and donors alike. Gold is causing harm to AFLDS’
13 reputation and goodwill, its donor base, and its ability to bring in additional money to
14 accomplish its charitable purposes.

15 Gold must be stopped before she destroys AFLDS altogether.

16 **III. Any Threatened Injury to Defendant Outweighs the Harm a TRO Would Cause**
17 **Gold**

18 Gold has no authority whatsoever to act on AFLDS’ behalf. Therefore, no harm will
19 befall if she is stopped and a temporary restraining order is entered against her. Gold resigned
20 on February 2, 2022 and indisputably has no position with AFLDS. Thus, to prevent her from
21 interfering with AFLDS’ operations, employees, and relationships outweighs any harm she
22 will sustain as a result of the TRO.

23 **IV. Entry of a TRO Would Serve the Public Interest.**

24 AFLDS is a nonprofit organization that collects and uses funds for charitable purposes.
25 For this reason, an entry of a temporary restraining order to prevent Gold from continuing to
26

1 spend charitable funds for her own personal purposes, sabotaging AFLDS’ purposes and
2 mission, and harming employees of the organization serves the public interest. Permitting her
3 conduct to continue unchecked causes great harm to the public trust in nonprofit organizations
4 designed to serve the public.

5 **CONCLUSION / REQUEST FOR RELIEF**

6 Pursuant to. Ariz. R. Civ. P. 65, Defendants AFLDS and its Board, move this Court
7 for a Temporary Restraining Order and Preliminary Injunction restraining and enjoining
8 Plaintiff, Simone Gold, from:

- 9 1. Holding herself out as a representative, officer or director of AFLDS to
10 AFLDS staff, AFLDS donors, and the public, including, without
11 limitation, from communicating with any of AFLDS’ banking partners
relating to AFLDS or AFLDS’ assets;
- 12 2. Communicating with current AFLDS employees about matters concerning
13 its activities, this lawsuit, and the claims asserted in this lawsuit;
- 14 3. Accessing AFLDS’ electronic mail, website domain name systems,
15 electronic databases, and other internet and intranet systems;
- 16 4. Accessing and using AFLDS’ funds, including credit cards, real estate and
17 other properties;
- 18 5. Defaming or disparaging Joseph Gilbert and others associated with
AFLDS;

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6. Directing any person to engage in any of the above activities on her behalf;
and

7. Such other relief as this Court deems proper.

RESPECTFULLY SUBMITTED this 28th of December 2022.

PROVIDENT LAW®

/s/ Timothy J. Watson

Timothy J. Watson, Esq.

Erik W. Stanley, Esq.

Christopher J. Charles, Esq.

14646 N. Kierland Boulevard, Suite 230

Scottsdale, AZ 85254

Attorneys for Defendants

COPY efiled with AZTurboCourt
this 28th day of December 2022.

COPIES served as indicated below
this 28th day of December 2022, to:

Honorable Timothy Thomason
Maricopa County Superior Court

[AZTurboCourt]

Bradley A. Burns, Esq.
Amanda E. Newman, Esq.
Adin J. Tarr, Esq.
Dickinson Wright PLLC
1850 N. Central Avenue, Suite 1400
Phoenix, AZ 85004-4568
bburn@dickinsonwright.com
anewman@dickinsonwright.com
atarr@dickinsonwright.com
courtdocs@dickinsonwright.com
Attorneys for Plaintiff

[First-Class Mail and Email]

/s/ Mary Richardson