

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-015525

01/27/2023

HONORABLE TIMOTHY J. THOMASON

CLERK OF THE COURT
N. Johnson
Deputy

SIMONE GOLD

BRADLEY A BURNS

v.

JOSEPH GILBERT, et al.

TIMOTHY J WATSON

AMANDA E NEWMAN
KELLYE F STORY
MATTHEW BROWN
JUDGE THOMASON

MINUTE ENTRY

Plaintiff Dr. Simon Gold (“Gold”) has moved for injunctive relief against defendants Joseph “Joey” Gilbert (“Gilbert”), Jurgen Matthesius (“Matthesius”) and Richard Mack (“Mack”). The Court has considered the Application, Response and Reply, along with the evidence submitted at the January 25, 2023, hearing.

Defendants Gilbert, Matthesius, Mack and Free Speech Foundation d/b/a/ America’s Frontline Doctors (“AFLDS”)¹ have applied for a preliminary injunction. The Court has considered the Application, Response and Reply, along with the evidence submitted at the January 25, 2023, hearing.

¹ Gold disputes the ability of AFLDS to assert Counterclaims and to seek injunctive relief. Control of AFLDS is what is at issue in this litigation. The Court recognizes that this is a dispute between Gold, on the one hand, and primarily Gilbert, on the other hand. The fact that AFLDS purports to be asserting claims and seeking injunctive relief is not critical to the Court’s consideration of the dispute over injunctive relief. The Court considers AFLDS to be a neutral party.

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BACKGROUND

Plaintiff Gold incorporated AFLDS as a non-profit corporation in June of 2020. AFLDS advocates for medical and healthcare issues, combats media censorship of medical related information, and supports medical freedom. The bulk of the funds raised by AFLDS are raised by her efforts. AFLDS is governed by a Board of Directors (the “Board”).

From September of 2020 through February of 2022, Gold was a Director on the Board and the Executive Director or President² of AFLDS. Gilbert is presently the Chairman of the Board. Matthesius and Mack are also on the Board.

Gold was accused of misusing AFLDS’s funds for her personal use. For example, she allegedly purchased a home in Naples, Florida for \$3,600,000, with company money, for her own use. Defendants provide numerous other examples of improper spending of AFLDS funds by Gold. Gold denies the accusations, contending that the Naples home is owned by an AFLDS affiliate and that corporate funds have been properly used for appropriate purposes.

In late 2021 and early 2022 Gold decided to transition her efforts to GoldCare Marketing Services LLC (“GoldCare”). GoldCare is a for profit venture that operates health and wellness clinics. Gold allegedly used AFLDS resources and personnel to assist GoldCare.

On February 2, 2022, at a Board meeting, Gold resigned from the AFLDS Board. The Board accepted her resignation. Mr. Gilbert became Chairman. Amy Landau (“Landau”) became the Executive Director. Gold subsequently confirmed in various writing that she was no longer on the Board.

Discussion ensued at the February 2, 2022, Board meeting about Gold and AFLDS entering into a Consulting Agreement. The Board voted to have Mr. Gilbert negotiate the Consulting Agreement.

Gold now contends that she only “considered the possibility” of resigning from the Board. She submits that an agreement was reached that she would resign, in exchange for a Consulting Agreement with monthly compensation of \$50,000, and that AFLDS would provide her with \$1.5M of “seed money” for GoldCare. Gold contends that fulfillment of these promises were conditions to her resignation. She claims that she never signed a written resignation under Section 7.1 of AFLDS’s bylaws, despite being asked to do so on multiple occasions.

² It is not clear if Gold was Executive Director or President.

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On June 22, 2022, Gold was sentenced to sixty days in federal prison, after pleading guilty to a charge of unlawfully entering and remaining in a restricted area of the United States Capital on January 6, 2022. She was released on September 9, 2022.

Gilbert advised Gold that the Board had taken steps to look investigate her use of charitable funds for personal purposes. Gold contends that Gilbert used the opportunity of Gold's incarceration to attempt to seize control of the company. Gold also submits that Gilbert has been engaged in financial improprieties, including absconding with at least \$5,000 of AFLDS money per month.

Gold also claims that Gilbert improperly took \$1.1M in AFLDS's funds and deposited them in his law firm's trust account. Gold demanded return of the funds. Gilbert refused. The funds were transferred, however, because of Gold's concern that they may be seized, due to her legal problems.

Defendants claim that Gold has subsequently taken numerous steps to seize control of AFLDS and interfere with its operations. For example, on October 31, 2022, she sent a letter on AFLDS letterhead, signing her name as the Chairman and President of "Free Speech Foundation," which is a dba for AFLDS. She has also filed papers with the Arizona Corporation Commission, representing herself to be the CEO and Chairman of the Free Speech Foundation. She has directed AFLDS employees to seize control of AFLDS's electronic mail, website, domain name systems, and other electronic databases. She has claimed to "resume" her role and Chairman and President of AFLDS. She has purported to suspend AFLDS in house counsel and terminate Mr. Gilbert's position.

Gold claims, however, that, other than during her incarceration, she has always had control of the company. Gold asserts that she presently has managerial control of AFLDS. She claims that over 40 of the 45 workers at AFLDS work at her direction.

GOLD'S DECLARATIONS

Drew Kachurak

Drew Kachurak ("Kachurak") is the AFLDS marketing director. Kachurak states that Gold is involved in all major decisions of the company. Nearly all of the workers look to her for direction. Gold is crucial to marketing operations. Kachurak disagrees that the defendants have been in control of the company and that Gold only recently tried to seize control. Gilbert only leads a small group who are not significantly involved in the operations of the company. Kachurak believes that Gilbert has lied about Gold's alleged improprieties.

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Matt Waters

Matt Waters (“Waters”) is the Director of Development for AFLDS. He believes that Gold is critical to the operation of the company. Donors donate because of Gold. Gold is involved in all aspects of the company. She is actively involved in fund raising. AFLDS’s donor list was created by the work and vision of Gold.

Lisa Andrzejewski

Lisa Andrzejewski (“Lisa”) has worked at AFLDS since 2021. She is now the Executive Director. Lisa states that operation of AFLDS has continued under her direction and the direction of Gold. Despite the current dispute, Lisa has continued to do her job. Gold is in control of the company and involved in all decisions. Gold is extremely hard working. Lisa states that the notion that the defendants have directed operational control of the company is ludicrous. Gold has operated the company at all times. Gilbert did become more involved when Gold was in prison. Even then, however, Lisa said she acted at Gold’s direction. Gilbert paid his assistant Andrea Wexelblatt (“Wexelblatt”) \$12,000 per month. Lisa thought this was vastly excessive. She is almost the highest paid person at the company. Lisa believed that Gilbert was improperly receiving company funds. Lisa believed that Gilbert should have been removed from the Board, pending an investigation. Gilbert had in house counsel tell Lisa that she was fired. Lisa thinks it will fold if Gilbert is in charge. Payroll has not been paid for January.

Cross-examination—Lisa was not at the February Board meeting. In Exh. 31, Lisa wrote that “I found these minutes! This show when Dr. Gold resigned.” Gilbert was MIA until June of 2022. Gold still ran the organization after she got out of jail. Lisa volunteers time at GoldCare. She is not Gold’s assistant. She was never paid by GoldCare.

A.J. Andrzejewski

A.J. Andrzejewski (“AJ”) is Director of Security, Logistics and Procurement for AFLDS. In late 2021, the Board of Directors of AFLDS authorized the purchase of a house in Naples, Florida. The house was not a purchase for Gold. Rather, the home is used for AFLDS purposes and is owned by a Florida based LLC, which is owned by AFLDS. Gold is involved in all company decisions and most of the employees look to her for direction. The company could not function without Gold. Gilbert leads only a small group of people. Gilbert was more involved when Gold was in prison. Gilbert said, however, that his authority came from Gold. Gold has been in control of the company; the notion that she only recently attempted to take control is not true. Gilbert has purported to conduct an audit of expenses. In six months, however, no one has asked AJ about specific purchases. Gilbert has accused others of misusing funds. AJ, however, states that he is aware that Gilbert has used company funds for personal purposes. Gold has only used private plane

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flights on two occasions, when it was necessary. AJ believes that Gilbert is behind cyber-attacks on Gold.

Cross-examination—Gold signed the original contract for Naples in her own name. Gilbert asked AJ to sell the house. Gold’s lawyer said that there could come a time when it will need to be sold. There is a “Team House” in Florida. AJ lives there and pays \$2,000 per month in rent, through payroll deductions. Gold had to drive privately when she was on the no-fly list. The company purchased two Pelotons and one is in the Naples home. Gold reimbursed the company for the Peloton in the Naples home.

Troy Brewer

Troy Brewer (“Brewer”) is a CPA and in charge of all AFLDS financial matters. In May of 2022, Gilbert contacted Brewer and said he should be paid \$5,000 per month over his usual salary. Brewer believes that this was improper self-dealing. Gilbert has also regularly requested additional funds. Gilbert asked for pay checks early, such that he received an extra month of pay in 2022. Brewer contacted Lisa because of concerns about Gilbert. Lisa contacted Gilbert and Gilbert attempted to fire her. Gilbert told Brewer to pay Wexelblatt \$12,000 per month. In October of 2022, Gilbert informed Brewer that Mack was named CEO and should be paid \$20,000 per month. AFLDS did not have a CEO position. Gold has always directed the operations and financial affairs of the company. In November of 2022, Brewer asked Gilbert to return \$1.1M of AFLDS money deposited with his law firm. He refused. Various threats have been made to Brewer by Gilbert and people associated with him.

Cross-examination—Gilbert asked for pay increases five or six times. He also asked for payments early. He was paid an extra month of compensation. After Gilbert’s pay went up to \$25,000 per month, it was reduced to \$20,000 per month. Brewer told Gilbert that the Naples home should be sold if it is causing a problem.

Dr. Simone Gold

Until September of 2022, defendants all recognized Gold’s ongoing Board of Directors role and operational leadership at AFLDS. Gold began to demand that Gilbert return \$1.1M that he deposited with his law firm. He refused.

In September of 2022, Gold learned that Gilbert had pressured Brewer to pay him more money and to pay unreasonable sums to his assistant. She also learned that Gilbert had spent over \$14,000 on plane tickets for his family. Lisa confronted Gilbert and he purported to fire her. Gold confronted Gilbert in September. In response, Gilbert started a defamatory campaign against her and purported to fire her.

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Gold has always led the operation of the company. All the AFLDS field workers report to Gold. Gilbert, Mack and Matthesius have always supported Gold running the operation. Gold is the chief fund raiser for the company. Because of Gold, AFLDS has a large media and social media operation. Gold has been President of the company since 2020.

In early 2022, Gold considered resigning from the Board. She agreed to leave in exchange for promises, which included a Consulting Agreement and payment of seed money to start health care clinics. The seed money would be \$1.5M and the compensation under the Consulting Agreement would be \$50,000 per month. All members of the Board agreed. Gold claims that it was agreed that she would not leave the Board until these things were accomplished. At the February 2, 2022, Board meeting, Gold offered to resign, effective only when the promised items were performed. The Board never performed. Gold submits that the resignation never took place. She also claims that she rescinded any such agreement. Gold claims that the Board considered her to have remained as a Board member. Gold continued to lead the company. Gold did mention her resignation at times because she thought the Consulting Agreement was being finished.

Gold has demanded that Gilbert return the \$1.1M. He has not done so, even though he has stated that he would.

Gold was in prison in the summer of 2022. She provided instructions to AFLDS employees about their roles. Lisa was in charge of the organization. During her absence, Gilbert began to overstep his authority. He purposed to fire people. Gold later found that Gilbert was engaged in other financial improprieties. Gilbert demanded that Brewer pay him \$5,000 per month over his regular salary. Gilbert had no right to those funds, and the payment was never authorized by the Board. Gilbert wanted to pay Ms. Wexelblatt \$12,000 per month, which was excessive. Gilbert has focused his efforts on outside activities and has not performed services for AFLDS that he should have.

In October of 2022, Gold reported Gilbert's malfeasance to the Board and to counsel. No actions were taken. Gilbert then tried to seize control of the company. He purported to fire Lisa.

Gilbert retaliated against Gold and accused her of wrongdoing. Numerous fake Twitter accounts accused Gold of wrongdoing. Gold believes this was arranged by Gilbert. Matthesius and Mack have not investigated to determine if Gilbert's claims are accurate.

In October, Gilbert purposed to hire Mack as CEO at \$20,000 per month. The company does not need a CEO and the salary is excessive. Gilbert has written that Mack is unqualified and admitted that actions were taken to spite Gold.

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The Florida house was purchased by AFLDS for company purposes. Gold was encouraged to live and conduct business in the home. The purchase was extensively discussed and approved. Gilbert acknowledged the purchase of the home in numerous writings. AFLDS owns the home through a subsidiary. As part of her compensation, Gold was provided living space in the Florida home, since extensive business is conducted there. Gold has not used company funds to purchase personal vehicles. The vehicles are not owned by Gold and are used for business functions. Gilbert supported the use of the vehicles. Gold has not used AFLDS credit cards for personal use. Gold believes that the audit allegedly being conducted by Gilbert is a sham. Gold has not used company money for personal travel expenses.

Gold terminated Gilbert in October of 2022. Gilbert has not recognized the termination. Gilbert has purposed to fire six of the eleven company directors.

Payroll was not made in January. Most of the company money is in defendants' control. Gilbert caused Security Bank and Trust to freeze accounts. Without access to funds, AFLDS will not be able to survive for very long.

Gold did use AFLDS personnel and resources to help start up efforts for GoldCare. GoldCare owes AFLDS a little more than \$100,000 and is prepared to pay that to AFLDS.

Cross-examination—Gold claims she never resigned. She does not believe that theft charges against Gilbert were investigated. She admits that she has said in writing that she was not on the Board. George Wentz negotiated her resignation deal. It is not in writing. Gold did not ask Gilbert to safeguard the funds put in Gilbert's trust account. Gilbert offered to do it. Gold agreed. Later, she asked for the money back and Gilbert refused. She later found out that the money should not have been transferred and that Gilbert had a conflict of interest. She has called Gilbert a crook and a con man. She directed staff to cut off Gilbert's email access, after Gilbert tried to cut her off. Gold has always had control of AFLDS's social media. She did put one account in her own name. Gold has referred to Gilbert as the chair, because she "thought we were there." Gilbert told her that he had signed the Consulting Agreement. Gilbert asked Gold to sign a resignation and she refused. AFLDS is an anti-corruption organization. Gold raised money to pay employees recently.

DEFENDANTS' DECLARATIONS

Amy Landau

Amy Landau ("Landau") works at AFLDS. She was a Director until February of 2022. At that time, she was appointed Executive Director. In September of 2021, Gold told Landau that she wanted to establish corporate headquarters in Florida and that she wanted to buy residential property for those headquarters. Gold told Landau that she (Gold) would live there. Landau

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travelled to Florida to look at properties. Gold, however, purchased the Naples home without Landau's involvement. The Board of Directors did not authorize the purchase. Landau did not know that company funds were used to buy that property.

Landau attended a February 2, 2022, Board meeting via Zoom. At the meeting, Gold offered her resignation from the Board and as Chairman and Executive Director of the company. The Board voted and accepted her resignation. There was no mention of any contingencies. Gold told Landau that she intended to resign and focus on wellness clinics. Gold never mentioned any contingencies. Gilbert was elected Chairman and Landau was named Executive Director. It was only after Gold's resignation that Gilbert mentioned the possibility of offering Gold a Consulting Agreement.

On February 9, 2022, Gold told AFLDS leadership that she had resigned from AFLDS and from the Board. There was no mention of any contingencies.

Cross-examination—Gold terminated her son's employment. Landau was not aware that Gold had the authority to do that. Landau was not aware that Gold accused her son of stealing.

Ven Miller

Ven Miller ("Miller") is an owner of Studio 17 LLC. Wexelblatt is also a member. Studio 17 created and published social media and other content for AFLDS. When Wexelblatt began working for AFLDS, Studio 17 ensured that AFLDS was aware that Wexelblatt worked for both companies. Wexelblatt did not work on AFLDS projects and was not paid for any AFLDS work.

Richard Mack

Mack is a Director for AFLDS. He has also been President since October of 2022.

The Board never voted to purchase the Naples home. Mack was not aware of the purchase until several months after it was purchased.

In February of 2022, Gold announced at a Board meeting that she was resigning. Mack understood that she was going to start a company that would run health and wellness clinics. There was no discussion about payments being made to Gold in exchange for her resignation. There was discussion about entering into a Consulting Agreement with Gold; there was no discussion about such an agreement being a condition to her resignation.

In the spring of 2022, AFLDS began paying Gold \$50,000 per month to perform marketing services. Mack did not approve these payments. The Board never voted to approve such payments.

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The Board never approved a lump sum consulting payment to Gold. The Board voted Gilbert as Chairman and Landau as Executive Director.

Mack is the president of Constitutional Sheriffs and Peace Officers Association (“CSPOA”). In March of 2022, Mack sent an email to Gilbert, Matthesius and Gold asking for AFLDS’s help in raising funds for CSPOA. Mack asked for Board approval of a donation. Mack offered to abstain from voting. AFLDS did not make a donation.

When Gold was in prison, Mack heard that there were problems with John Strand’s (“Strand”) work and that he was using AFLDS funds for personal purchases. Strand was suspended and later terminated.

In October of 2022, Mack received a letter from Gold, accusing Gilbert of misappropriating \$5,000 per month, failing to perform his duties, paying his assistant, Wexelblatt, excessive monies and entering into a business relationship with Studio 17, partly owned by Wexelblatt. Mack and Matthesius hired the law firm of Wagenmaker & Oberly to investigate. The law firm issued a report and found that Gilbert’s payments were approved by the Board, that Wexelblatt was not Gilbert’s assistant and that there was no conflict with Studio 17. The firm also found that Wexelblatt’s salary was reasonable, given that she worked as Operations Media Manager and worked more than 60 hours per week. Gold later added the allegation that Mack attempted to extort money for CSPOA. The law firm found no wrongdoing in connection with the CSPOA matter. The Board decided not to remove Gilbert.

In October of 2022, Mack was elected by the Board as President, at a salary of \$20,000 per month. In November, Mack was not paid because Gold took control of payroll and refused to pay Mack and others, including Gilbert.

The Board voted to terminate Gold’s access to email, the website, and other electronic resources, because of her efforts to improperly interfere with AFLDS’s operations. The Board also voted to remove Gold as signatory on AFLDS bank accounts. After Gold’s resignation, she did not attend any Board meetings and never asked to attend.

Cross examination---When Gold resigned, it was discussed that Gold would be paid as a consultant. Mack insisted on being paid \$20,000 per month. Mack did not approve Gilbert’s temporary pay increase. Mack was brought in to clean things up and help deal with the conflict between Gold and Gilbert. Gilbert wrote to Mack that you can’t come back from things that Gold had done. (Exh. 49). Gilbert tried to dissuade Mack from talking to Gold. Mack felt Gold could not come back from it. Gilbert wrote that “Dr. Gold would be partially correct in her critique that we are doing this just to spite her...” She would also be correct in concluding that Mack was not that familiar with what had occurred. Gilbert was incensed at Gold. Mack wrote to Gilbert that, “I

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really wanted to try this and you're firing me before I even get a chance?" Gilbert said he was not firing him. Gilbert thought that Gold needed to be removed.

Christine Pazzula

In December of 2021, Christine Pazzula ("Pazzula"), a lawyer, was appointed to a role where she would manage the current external counsel workload and assist with corporate legal actions. In February of 2022, Gold told Pazzula that she was going to resign from AFLDS. Gold never mentioned any conditions to her resignation. Gold told Pazzula that she was going to turn her attention to health and wellness clinics.

The Board meeting on February 2 was conducted via video conference. Gold ran the meeting. Pazzula, Gold, and attorney George Wentz ("Wentz") were all in attendance for the meeting in Naples. Gold told Pazzula to not tell the others that Wentz was present. Pazzula took the minutes. Gold offered to run health and wellness clinics as part of AFLDS. The Board voted not to do so. Gold then said she wanted to focus on GoldCare and then offered to resign. She mentioned no conditions. The Board voted to accept her resignation. Gilbert was voted in as Chairman. Gilbert requested that Gold continue to be the face of AFLDS in a marketing capacity. The Board authorized Gilbert to negotiate a Consulting Agreement. Gold never told Pazzula that there were conditions to her resignation.

Pazzula told Wentz that Gold living in the Naples home rent free was an issue for AFLDS and that Gold would have to pay rent if she continued to live there. Wentz told Pazzula that the home was being sold. The draft of the Consulting Agreement provided by Gold's lawyers, however, contained a provision that Gold would live in the home rent free. The draft also called for a lump sum payment of \$1.5M and payments of \$50,000 per month. Pazzula resigned in March of 2022.

Cross-examination—Pazzula wrote the February 2022 Board minutes. She was not aware of any agreement that the resignation was conditional. The minutes were drafted in advance; Gold told her what to put in the draft. The minutes were revised and expanded on after the meeting was complete.

Jurgen Matthesius

Matthesius is a Director for AFLDS. The Board never voted to approve the purchase of the Naples home. Matthesius did not know of the home until several months after it was purchased.

At the Board meeting in February of 2022, Gold resigned, effective immediately. There was no discussion about payments being made to Gold in exchange for her resignation. There was

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discussion about a possible Consulting Agreement; there was no discussion about such an agreement being a condition to Gold's resignation.

Gold began receiving \$50,000 per month in the spring of 2022. Matthesius never agreed to these payments. The Board never approved paying Gold \$1.5M. Gilbert was elected as Chairman.

For the months of March and April, Gilbert was holding two paid positions and working long hours. Matthesius says that he approved an increase in Gilbert's pay from \$15,000 to \$25,000. Later, Matthesius agreed that Gilbert would receive \$20,000 per month.

When Gold was in prison, Matthesius learned that Strand was using AFLDS money for personal purposes. Strand was suspended and later terminated.

Matthesius received the October 2022 letter from Gold mentioned above. He was aware that the law firm of Wagenmaker & Oberly was hired to investigate. Matthesius received and accepted the law firm's conclusions. Matthesius approved terminating Gold's access to email and electronic resources and voted to remove Gold as a signatory on bank accounts. The Board approved hiring an information technology security company to secure AFLDS's information technology. Since February of 2022, Gold has not attended any Board meetings or asked to attend.

Joseph Gilbert

Gilbert is the Chairman of the Board of AFLDS, and the Director of Strategy and Chief Operating Officer. He is paid \$20,000 per month.

Gold said in 2021 that she wanted to move to Florida. The Board never approved use of company funds to buy a home. In fact, in house counsel told Gold to not purchase a residence. Gold bought the Naples home with AFLDS funds. The Board never approved the purchase. Gilbert was not aware that Gold had bought the home with AFLDS funds until after the purchase was completed. Gold lives in the home, rent free. Gilbert told Gold to sell the home and Gold said she was going to do so. Gold pays a housekeeper \$5,000 per month and a security officer \$20,000 per month, with AFLDS funds. She spent \$50,000 per month for a period of time on personal expenses. She also purchased three vehicles with AFLDS funds, for her own transportation. The Board never approved purchase of the vehicles. Gold has flown on private planes paid for by AFLDS, without Board approval. One trip cost over \$100,000. When Gold started GoldCare, she used AFLDS employees to work at GoldCare.

Gilbert was aware that Gold was going to resign. There was no discussion about any agreements attendant to her resignation. There was never any agreement to pay Gold in exchange for her resignation. Gilbert did suggest that AFLDS enter into a Consulting Agreement. Gilbert

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did attempt to negotiate such a deal, but this was never a condition to her resignation. AFLDS started paying Gold \$50,000 per month for marketing services. The Board never approved a lump sum payment. Gilbert was elected Chairman at the February Board meeting. Gold never told Gilbert that her resignation was conditional. Gold never attended another Board meeting or ask to attend any such meetings.

Gold wanted a \$1.5M lump sum payment. Gilbert was concerned about such a large payment. No Consulting Agreement was ever reached.

In March and April, Gilbert held two paid positions and was working long hours. Matthesius agreed that Gilbert could increase his pay to \$25,000 per month. Gilbert told Brewer to pay him \$25,000 per month for March and April.

Later, Gold announced that Lisa would be the new Executive Director. The Board deferred to Gold. Matthesius and Gilbert agreed that Gilbert's pay going forward would be \$20,000 per month.

In March of 2022, AFLDS hired Fisher Broyles to examine how AFLDS was receiving money. Fisher Broyles told AFLDS to not enter into an agreement with Gold to pay her \$1.5M.

In June of 2022, AFLDS received a report from the law firm of Wagenmaker & Oberly that confirmed concerns about Gold's use of AFLDS for her own for-profit business and for payment of personal expenses. AFLDS also had a compensation study completed.

When Gold was in prison in the summer of 2022, the company was run by the Board. Gilbert ran the day-to-day operations. The Board hired Capin Crouse to conduct an audit of Gold's misuse of AFLDS funds. The audit is ongoing.

Strand lived with Gold and worked at the company. Strand did not take direction from his supervisors or the Board. He used AFLDS credit cards for his personal expenses. The Board suspended Strand and later terminated him. Gold agreed with the termination.

After Gold got out of prison, Gilbert told Gold that the Naples house had to be sold. Gilbert also told Gold about other steps that needed to be taken in connection with use of charitable funds. After her release, Gold began to direct AFLDS employees. Gold was directing the payroll and staffing processes through her influence over Lisa.

In October, Gold sent a letter accusing Gilbert of financial improprieties. A law firm was hired to investigate. Gold began to threaten the Board, AFLDS's counsel and employees. Gold began taking numerous actions on behalf of AFLDS, without authorization to do so.

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In 2021, Gold was concerned that the government might freeze AFLDS bank accounts. As such, Gold and Gilbert agreed to transfer funds to Gilbert's law firm's trust account. The money was transferred and kept in trust. In November of 2022, the money was transferred into a trust account at Wagenmaker & Oberly. Some of the money has been used to pay employees and vendors.

Gold has been making defamatory statements about Gilbert. She has called Gilbert a crook.

In late 2022, an IT consultant learned that the afllds.org domain was hijacked. The consultant determined that an employee made the changes to the domain. After the changes, Gold and her people had complete control over the accounts that own and manage the domain. The IT person reported that Microsoft indicated that Jared Lewin, a member of the AFLDS web team and Gold's executive assistant at GoldCare, submitted a request to take over the AFLDS Microsoft tenant.

Wexelblatt was hired as a legal assistant in May of 2021. She later worked for GoldCare. Gilbert then recruited her, and she agreed to come to AFLDS. Lisa hired her as Operations Media Manager. She is paid \$12,000 per month. Wexelblatt works part time at Gilbert's law office. Gilbert did not hire Studio 17. Gold knew that Wexelblatt was a part owner of Studio 17.

Cross examination---Gold posted information about a dishonest doctor that was referring to Gold. Gilbert admitted that AFLDS bought the Naples home. Gilbert claims that he never approved the purchase in advance. Gilbert admitted that he learned of the Naples home purchase. There is an email where Gold explained the purchase and said that she would sleep at the headquarters. Gilbert wrote that he concurred. Gilbert ultimately said that he had no issue with the home; the company just had to get compliant with non-profit rules.

Gold first talked about GoldCare in December in 2021. She wanted to stay on at AFLDS as a paid consultant. She resigned to work at GoldCare. She could not use donated funds for GoldCare. There was discussion about a lump sum payment and an email about deferring the lump sum. Counsel told Gilbert that AFLDS could not pay money to Gold to invest in her business.

DISCUSSION

The law

Injunctive relief is in order when the moving party shows a strong likelihood of success on the merits, there is a possibility of irreparable injury, the balance of the hardships favors the moving party and public policy favors the injunction. *Shoen v. Shoen*, 167 Ariz. 58, 63 (App. 1990). To "meet this burden, the moving party may establish either (1) probable success on the merits and

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the possibility of irreparable injury; or (2) the presence of serious questions and the balance of hardships tip sharply in [the party's favor]." *Id.*

The purpose of injunctive relief in this setting is to maintain the status quo. The Court must ascertain the reality of the existing status and relationship between the parties. *Dominion Video Satellite, Inc. v. EchoStar Satellite Corp.*, 269 F.3d 1149, 1155 (10th Cir. 2001).

Factual findings

Gold founded AFLDS, a non-profit company, in 2020. AFLDS advocates for various medical and healthcare issues and supports medical freedom and civil liberties. Gold has been the moving force behind the company and the face of the company.

AFLDS relies on donations. Most of the funds have been raised by Gold's efforts.

Gold was on the Board since the company's inception. She was also the President.³ Gold has been the primary person running the operations of this company during most of its history.

Gilbert became a Director in March of 2021. Mack and Matthesius were added to the Board in December of 2021. Landau was on the Board from September of 2020 until February of 2022.

Gold was charged with trespassing in connection with the January 6, 2021 debacle. She spent 48 days in prison. Gold has been a controversial figure because of some positions taken by AFLDS and because of January 6.

Gold was concerned that AFLDS funds could be seized by the government due to her legal problems. She discussed this with Gilbert. Gold agreed to have \$1.1M moved to Gilbert's law firm trust account. When Gold later asked for them to be returned, Gilbert refused. The funds, however, remain AFLDS assets. The money has been moved to the Wagenmaker and Oberly trust account. Some company expenses have been paid out of the fund.

Gold purchased the home in Naples, Florida through an AFLDS subsidiary in January of 2022. Gold regularly resides there. The purchase price was \$3.6M. AFLDS funds are used to pay for household expenses, including a housekeeper. Gold has also used company money for security purposes.

³ Gold claimed that she was President. Other witnesses stated that she was Executive Director.

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Proper corporate formalities were not used in connection with the Naples home. Formal Board approval of the purchase never occurred. At the same time, the purchase was not a secret. Gilbert was clearly aware of the purchase and agreed with it.

AFLDS has, through Gold, purchased three expensive vehicles for Gold's use. Gold contends that she uses the vehicles for company purposes.

In 2021, Gold began to consider stepping down from the Board and devoting time to her for profit company, GoldCare. At the February 2022 Board meeting, Gold resigned and the Board approved her resignation. There were no conditions to her resignation. The narrative that Gold has provided about her resignation is false.

Gold claims that attorney George Wentz negotiated a deal that Gold would resign on the conditions that she be paid \$1.5M in cash to invest in GoldCare and that she receive a \$50,000 per month Consulting Agreement. Gold's claim is not true. No testimony has been provided by Mr. Wentz. It is simply inconceivable that an attorney would negotiate such a deal and never document it in any way.

There was discussion about Gold staying on as a consultant. AFLDS wanted Gold to stay on and continue to be involved in fundraising and continue as the "face" of the company. In fact, the company paid her \$50,000 per month. No Consulting Agreement, however, was ever finalized and signed.

The notion that a non-profit company could take donated funds and pay them to a principal of the company to invest in a for profit business is simply absurd. Gold is a very intelligent physician and lawyer. She had to know that such an arrangement was completely improper and likely illegal. In any event, there is simply no evidence that AFLDS agreed to pay her \$1.5M. Such a payment was clearly not a condition to her resignation.

The Board minutes clearly show that Gold resigned from the Board unconditionally. In fact, Gold directed how the minutes were to be drafted.

Gold has frequently acknowledged that she is not on the Board and that Gilbert is the Chairperson. Her testimony that she made these statements because she thought "we were there" is not credible.

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Gilbert was voted in as Chairman of the Board in the February meeting. Landau was voted in as Executive Director.⁴ Lisa was later named Executive Director. Mack was appointed by the Board to be President in October of 2022 at pay of \$20,000 per month.

Since her resignation, Gold has been heavily involved with the company. She had to step back during her incarceration. After she was released, however, Gold again began to be actively involved. Gold's specific status with the company is not clear. It appears as if her only authorized position has been as a consultant. She was paid \$50,000 per month as a consultant, at least for a period of time.

Gilbert and the rest of the Board clearly wanted Gold to continue to be involved with the company after her resignation. Her fundraising and managerial skills are important to AFLDS. Gold has continued to work on behalf of AFLDS. Gold has a substantial following in the company, with many employees reporting to Gold and taking direction from her.

The manner in which Gilbert received his temporary pay increase from \$15,000 to \$25,000 was handled improperly. Apparently, only Matthesius approved the ultimate increase from \$15,000 to \$25,000. After the temporary increase to \$25,000, Gilbert reduced his compensation to \$20,000 per month. Gilbert's unauthorized pay increase smacks of self-dealing. There is, however, no evidence of widespread theft by Gilbert or other Board members.

Gold sent a demand letter to AFLDS, with serious accusations of theft, in October of 2022. AFLDS had the accusation investigated by a law firm. No wrongdoing was found.

Gold used AFLDS property and personnel to benefit GoldCare. She has acknowledged that GoldCare owes AFLDS over \$100,000. GoldCare has not paid the money it owes to AFLDS.

Discussion

AFLDS is funded primarily from donations. As such, AFLDS, and the people who operate that company, occupy positions of public trust.

None of the parties have demonstrated that they are entitled to injunctive relief. Neither side comes into this Court with clean hands.

Indeed, this company has been thrown into turmoil, as a result of the actions of all of the parties. The malfeasance and recklessness of all of the parties have resulted in a fractured and

⁴ As noted above, there is confusion about whether Gold was President or Executive Director. The Board action taken in February was clearly intended to have Landau replace Gold. It was clearly the intent of the Board, however, to have Gold continue to be actively involved with the company as a consultant.

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unstable business, Both sides of this dispute claim they are in control of the company. In reality, no one is in control.

The parties to this dispute all owe fiduciary duties to the company. They all seem to have forgotten that. Instead, the parties have chosen to spend time and resources fighting with each other in Court.⁵ These parties, however, have an obligation to AFLDS and their donors to spend whatever time and effort is necessary to resolve their differences and begin to operate AFLDS in a responsible manner.

Both sides contend that they should be in control. Both sides accuse the other of harming the company by driving away employees and endangering fund raising. Both sides accuse the other of engaging in financial improprieties. Both sides seem to care more about winning in court and proving that the other side is at fault, than they care about operating this company in a responsible fashion.

This company needs to be “fixed,” and it needs to be “fixed” promptly. The parties to this dispute are the only people who can accomplish this. This Court cannot “fix” AFLDS. Issuing an injunction in favor of one side or the other is not going to “fix” this company.

Neither side has demonstrated that they are entitled to injunctive relief. Neither side has demonstrated that the “other” side is solely responsible for irreparable injury.

Gold has clearly not demonstrated that she is entitled to injunctive relief. Indeed, Gold’s claim that she is Chairman of the Board of AFLDS is nonsense. Gold clearly and unequivocally resigned from the Board. Gold’s testimony that her resignation was conditional is simply not credible.

The notion that Gold’s resignation was conditional on her receiving \$1.5M for wellness clinics is absurd. As noted above, the notion that donated funds could be provided to Gold to invest in her for profit business is ridiculous, and Gold had to know that. Even if the parties discussed providing this money to Gold, it was never a condition to her resignation.

There was discussion about entering into a Consulting Agreement with Gold. Entering into such an Agreement, however, was never a condition to Gold’s resignation.

Gold confirmed in writing that she had resigned from the Board; there was no mention of any conditions. Gold never told anybody that her resignation was conditional.

⁵ It seems highly likely that company money is being used to fund this litigation, perhaps on both sides. Using donated funds for such a purpose seems highly questionable.

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Gold now also makes the absurd argument that she never really resigned at all because her resignation was not in writing. All witnesses who were at the February Board meeting agree, however, that Gold tendered her resignation and the Board accepted it. The contention that Gold never resigned at all is simply ridiculous.

The fact that the resignation was not in a formal writing does not render the resignation ineffective. A.R.S. § 10-3807(A) provides that a director “may” resign by delivering written notice. It does not say that written notice is required. Yet, Gold contends in her papers that the statute “requires” that a resignation be in writing. Her contention is clearly incorrect.

Similarly, § 7.1 of the By-Laws provides that a Board member “may” resign in writing. It does not require resignations to be in writing.

Clearly, the statute and the By-Laws were intended to create a manner of resigning that is an alternative to formal Board action at a meeting. A Board member can simply submit a written resignation, in lieu of submitting a resignation at a Board meeting.

The notion that a Board member’s formal resignation at a Board meeting, which is accepted by the Board, is ineffective because it is not in writing is absurd. In any event, Gold acknowledged in writing that she was no longer on the Board.

Gold contends that Board resignations can be conditional citing A.R.S. § 10-3807(B). The Court, however, does not question that a resignation theoretically can be conditional. There is no evidence here that Gold’s resignation was conditional.

The defendants’ claims about the Naples home were not established by the evidence. Gilbert clearly knew about the purchase and endorsed it. Granted, formal Board action should have been taken and was not. Gilbert, however, knew about the purchase. He has no grounds to complain now.

Gilbert testified that his main concern now is to ensure that the Naples home is in compliance with non-profit requirements. This is a valid point. The Court highly questions whether a non-profit company should pay \$3.6M for an extravagant home to be used by one of the company’s principals, rent free. It appears as if very little company business occurs in that home. The Court also highly questions use of company funds for expensive cars, personal security, and housekeeping.

There is evidence that Gold or her attorney agreed to sell the Naples house. That is probably what should happen.

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Gold agreed to the transfer of the \$1.1M to Gilbert's law firm. As such, she really has no grounds to complain. Granted, Gilbert should have returned the money. Yet, the funds are safe and belong to AFLDS.

There is no evidence of any grand scale theft by Gilbert. As noted, however, the pay increase was not handled properly and should not have occurred. A hallway conversation is not the proper way to increase a corporate officer's pay. The manner in which Gilbert increased his pay does smell of self-dealing.

Gilbert is apparently still being paid \$20,000 per month from AFLDS. It is not at all clear why the company decided to pay Mack an additional \$20,000 per year to be President. It is far from clear to the Court what Mack's role in the company is. He does not appear to have any corporate managerial experience.

It is, of course, not the Court's role to make managerial decisions for this company. Nonetheless, paying Mack and Gilbert a total of \$40,000 per month appears to the Court to be greatly excessive.

Gilbert and Mack contend that they are in charge and control of the company. Yet, it has been on their watch that the company's operations have spiraled into chaos.

Simply blaming Gold for this chaos is inadequate. When Gold resigned, the Board wanted Gold to continue to be actively involved in the company. Gold's acumen and fund-raising skills were critical to the company's success and Gold, Mack and Matthesius knew that. As such, Gold's ongoing role with the company was done with defendants' knowledge and consent.

Gold continues to have a substantial following from many of the employees of the company. There appears to be some truth to Gold's claim that she has always had operational control of the company. Gold was allowed to continue to be heavily involved in AFLDS's operations by the defendants. The chaos that currently exists with this company has arisen, at least in part, due to Gilbert and Mack's failure to adequately control the company.

As noted at the hearing, the Court seriously questions whether Gilbert and Mack have the skill sets to properly run this non-profit company. The Court is not convinced that Gold is causing irreparable injury to this company. In fact, Gold's skill set appears to be critical to the survival of AFLDS.

Both sides claim they need an injunction to maintain the status quo. The status quo, however, is a situation where both sides claims that they are in control of the company.

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Since Gold is not on the Board, the Board can make any decision it feels is appropriate with respect to Gold's ongoing "employment" and status with the company.⁶ The Court does not find, however, that Gold is causing irreparable injury to the company. Indeed, issuing an injunction against Gold might result in the company going out of business.

The requests for injunctive relief by both sides are denied. A Receiver appears to the Court to be a necessary remedy here. Neither side, however, has requested a Receiver. The Court will likely appoint a Receiver, if requested. In the meantime, it is incumbent on these parties to resolve differences and comply with their duties to operate this company in a professional and responsible manner.

⁶ If Gold purports to be a Director in the future, and causes injury to the company, the Court would consider issuing an injunction, preventing her from purporting to act as a Director. Hopefully, however, these parties will not be back in front of the Court. This dispute needs to be resolved. The parties should retain a qualified mediator and spend whatever time is necessary to resolve this dispute.