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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF MARICOPA**

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

14 Plaintiff,

15 v.

16 JOSEPH "JOEY" GILBERT, an individual;
17 JURGEN MATTHESIUS, an individual;
18 RICHARD MACK, an individual; and
19 FREE SPEECH FOUNDATION d/b/a
AMERICA'S FRONTLINE DOCTORS, an
Arizona nonprofit corporation, in a
derivative capacity,

20 Defendants.

21 And Related Counterclaims.

Case No. CV2022-015525

**OBJECTION TO DEFENDANTS'
PROPOSED FORM OF ORDER**

(Hon. Timothy J. Thomason)

22 Plaintiff Dr. Simone Gold ("Gold" or "Plaintiff") hereby objects to the proposed
23 form of order and related Notice submitted by Defendants on February 1, 2023 (the
24 "Notice"). The Notice is the product of Defendants' not reading the Court's Minute Entry
25 (entered January 30, 2023) carefully, or otherwise not comprehending it. Both sides made
26 expansive requests for injunctive relief, and the Court made equally expansive denials of

1 preliminary relief for all parties. The message was clear: the Court is not granting
2 injunctive relief and the Court wishes the parties to figure out how to operate this entity
3 by agreement among themselves. Otherwise, a receivership is appropriate.

4 Defendants are not getting the Court's message. The day of the Minute Entry,
5 Defendants appeared in the media ludicrously declaring victory and the next day,
6 unprompted, sent a letter expressly refusing to engage in settlement discussions. *See*
7 Exhibit 1.¹ Two days after the Minute Entry, they filed the Notice, which essentially asks
8 for reconsideration of the Court's Minute Entry. The Notice includes zero meaningful
9 analysis as to why reconsideration would be justified, other than the (obvious) fact that
10 Dr. Gold remains in practical control of portions of AFLDS. The Court already knew that
11 after the Hearing, when it denied Defendants' requested preliminary relief, recognizing
12 the importance of Dr. Gold in practically operating AFLDS.

13 It gets worse. In the week after the Minute Entry, Defendants have sent dozens of
14 new termination letters purporting to fire nearly all remaining AFLDS employees and
15 departments except themselves and a handful of cronies. An updated organizational chart
16 showing the allegedly terminated employees is attached hereto as Exhibit 2. The people
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18
19

20 ¹ Exhibit 1 contains a number of mischaracterizations not germane here, but it
21 demonstrates the pretextual nature of Defendants' refusal to discuss settlement. They are
22 trying to punish Dr. Gold for publicly (and accurately) noting that the Court denied all
parties' requests for relief.

23 An interesting note that may be an issue of first impression in Arizona: Arizona Rule
24 of Evidence 408 likely has no application to a refusal to discuss settlement. *See, e.g.,*
25 *Atlantis Releasing Ltd. v. Bob Yari Productions*, 2010 WL 1525687, at *3 n.3 (C.D. Cal.
26 Apr. 12, 2010) ("The evidence sought to be excluded must be in the nature of an offer to
compromise a disputed claim. . . . [T]he Court finds that Rule 408 does not bar it from
considering that a meeting took place . . . at which Plaintiffs . . . essentially refused to
negotiate." (cleaned up)).

1 purportedly fired by Defendants are crossed out.² Most of these purported firings occurred
2 after the Minute Entry was entered.

3 Defendants are actively burning down the organization in their efforts to retaliate
4 against Dr. Gold. This is a breach of their fiduciary duties to AFLDS and the donors,
5 which the Court should not aid.

6 Defendants are asking the Court to reconsider its Minute Entry to assist their arson.
7 The Notice is essentially a motion for reconsideration without analysis — the lack of
8 analysis is disturbing because Plaintiff will be denied an opportunity to respond to any
9 new arguments. The Notice’s requests are fundamentally the same as Defendants’ prior
10 requests (the preliminary injunction that was denied), but with added detail. They would
11 do nothing to resolve the overall dispute. For at least the same reasons the Court denied
12 Defendants’ prior requests, the Court should deny the current requests.³

13 There are more reasons to deny the order requested by the Notice, and they are
14 important. They are discussed in more detail below, including the fact that a receivership
15 is the way forward, and Plaintiff will be seeking that relief as soon as possible.

16 **I. Analysis**

17 **A. Defendants Inaccurately Assume the Court’s Minute Entry Is Some**
18 **Kind of Binding Judgment that Needs Restating.**

19 The Minute Entry was a ruling on dueling motions for preliminary injunction. As
20 such, the Court’s findings related to the probability of success on the merits — while
21 extensive and detailed — are necessarily preliminary and cannot be any kind of judgment
22 on the merits. *See, e.g., Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981) (“The

23 ² This chart is Plaintiff’s best estimate of who has been terminated, given information that
24 she has. Regardless, dozens of people have been purportedly terminated, including after
the Minute Entry.

25 ³ Dr. Gold’s Response (filed January 11, 203) to the Defendants’ Motion for Preliminary
26 Injunction, and the evidence presented at the preliminary injunction hearing, are all
incorporated herein by reference.

1 purpose of a preliminary injunction is merely to preserve the relative positions of the
2 parties until a trial on the merits can be held. . . . A party thus is not required to prove his
3 case in full at a preliminary-injunction hearing, and the findings of fact and conclusions
4 of law made by a court granting a preliminary injunction are not binding at trial on the
5 merits.” (citation omitted))

6 The findings related to a preliminary injunction are either that facts support
7 granting preliminary relief, or that they support denying preliminary relief (as the Court
8 ordered here); it is not a trial on the merits and cannot be used a substitute for a trial on
9 the merits. *See, e.g., Powell-Cerkoney v. TCR-Montana Ranch Joint Venture, II*, 176 Ariz.
10 275, 280–81 (App. 1993) (“Under Rule 65(a), the trial court may not reach a final decision
11 on the merits in a preliminary injunction hearing unless the hearing has been properly
12 consolidated with a trial on the merits.”).

13 The Court surely needed no education on these elementary legal axioms, but
14 Defendants have lost sight of them. The Notice attempts to transform the Minute Entry
15 into some kind of judgment and order making actual binding factual findings. No
16 proceeding has occurred that could possibly support the expansive and final declarations
17 that are asked for in the Notice. This is an invitation for the Court to err, and it should
18 simply be denied.⁴

19 **B. Granting the Proposed Order Would Kill AFLDS.**

20 AFLDS’s operation should be allowed to survive while this dispute pends, and the
21 Court’s Minute Entry reflected a hesitance to grant Defendants’ injunctive requests
22 because such requests might endanger the operation. *See, e.g., Minute Entry at p. 20*

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24 _____
25 ⁴ Defendants’ Reply in Support of their Motion to Dismiss (filed February 3, 2023) does
26 the same thing: it invites the Court to err by applying its preliminary injunction findings
to a Rule 12 analysis! The Court seemingly declined the invitation to err in its order
entered February 10, 2023.

1 (“Indeed, issuing an injunction against Gold might result in the company going out of
2 business.”). The same logic extends to the Notice and Defendants’ proposed order.

3 Defendants, ignoring this discussion, ask the Court for an order to choke off
4 operational funds and IT resources necessary to keep the operation running. Make no
5 mistake: the AFLDS operation has essentially no chance of surviving such an order. And
6 that is probably one of the reasons the Court denied Defendants’ request for preliminary
7 relief in the first place. There is no reason for the Court’s correct decision to change.

8 **C. A Receiver Is the Way Forward.**

9 The Minute Entry noted that the Court is open to a receivership. That is the way
10 forward, especially with Defendants’ showy refusal to abide the Court’s Minute Entry and
11 discuss resolution with Plaintiff. *See Exhibit 1*. Plaintiff will be seeking the appointment
12 of a receiver shortly.⁵

13 In the meantime, there is no reason to assist Defendants’ destructive efforts. The
14 Court should simply deny Defendants’ proposed order, for the same reasons reflected in
15 the Minute Entry. The Court correctly expressed concerns about Defendants’ ability to
16 operate AFLDS (e.g., they do not know how to operate it and are not even qualified). But
17 even in the time since the Minute Entry, Defendants have again demonstrated their
18 inability or unwillingness to preserve AFLDS as an ongoing concern. They are actively
19 trying to fire everyone who does real work, and they are trying to kill the operation to spite
20 Dr. Gold.⁶

21 At the same time, the Court has expressed a clear hesitance to have Plaintiff solely
22 direct the organization. A receivership is the solution. A receiver can marshal assets, direct

23 _____
24 ⁵ The nature of operating AFLDS (an advocacy nonprofit) requires careful consideration
25 of receivership candidates. Plaintiff and her counsel are working on it as fast as possible
in the circumstances.

26 ⁶ This ongoing arson and retaliation may itself be grounds for removal as a part of the
case-in-chief.

1 employees, and work to preserve the ongoing operation while the dispute is pending, in
2 consultation with all parties.

3 A receiver will absolutely be necessary. Casting even the pretense of restraint and
4 prudence aside, Defendants have attempted to fire every single worker and department in
5 the time since the Court’s Minute Entry. *See Exhibit 2*. At the time of this writing, Plaintiff
6 believes that Defendants’ purported firings only spared one full-time worker — a 20-plus
7 year friend of Joey Gilbert’s.

8 **D. Defendants’ Representations about the Timing of their Notice Are**
9 **Misleading.**

10 Defendants’ Notice expresses dissatisfaction that Plaintiff did not take certain steps
11 immediately after the Minute Entry, after an email containing their proposed order was
12 sent to Plaintiff’s counsel. But less than a day’s notice was given — the email containing
13 the proposed order was sent at 4:44 p.m., with an arbitrary deadline of 10:00 a.m. the next
14 day. That is not sufficient time to confer with a client and form a position, even if counsel
15 had been available during that time. While this is not a vital point, the Court should be
16 aware that Defendants rushed back to the Court without allowing meaningful input from
17 Plaintiff.⁷

18 And the demands made by Defendants are unmoored from the Court’s Minute
19 Entry. The Court denied all relief Defendants requested. Dr. Gold is only trying to keep
20 AFLDS alive while the dispute pends.

21 **E. Defendants’ “Motion for Expedited Ruling”**

22 On February 7, Defendants followed up their Notice with a “Motion for Expedited
23 Ruling” thereon. Plaintiff has no objection to an expedited ruling, and it appears that the
24

25 ⁷ Rushing back to court may not always be wrong, but Defendants’ pretense that they gave
26 Plaintiff a meaningful opportunity to act or respond prior to seeking Court intervention is
inappropriate.

1 Court — by accelerating the deadline for this Response — is already considering the issue
2 in an expedited fashion.

3 But the “Motion for Expedited Ruling” is misnamed. It actually a supplement to
4 the original Notice, providing slightly expanded — but just as faulty — justification.⁸
5 Specifically, Defendants complain that AFLDS banks and vendors are not doing their
6 bidding, and they attach communications from two such parties. In so doing, Defendants
7 reveal that — rather than discussing settlement or a practical solution with Plaintiff in
8 even the most basic form — Defendants have been taking the Minute Entry to various
9 institutions and peddling it as somehow dispositive of the case. This does not support
10 granting Defendants the injunctive relief they again ask for.

11 First, it is concerning that, Defendants’ exhibits fail to provide Defendants’
12 communication to the vendor and bank — only the third-party responses are provided.
13 How did Defendants characterize the Court’s Minute Entry to those third parties? The
14 exhibits were obviously made to avoid providing that information. We are left to guess.⁹

15 Second, the third-party recipients (depicted in the Notice/Motion exhibits)
16 apparently read the Minute Entry more faithfully than Defendants: They correctly
17 determined that the Court refused to grant Defendants preliminary relief and that there has
18 been no ruling on the merits. *See* Motion Exh. A (bank quoted Minute Entry’s denial of
19 both sides’ requests for injunctive relief and inquired about status of request for receiver),
20 Exh. B (domain vendor noted that Minute Entry was not a ruling on the merits).

22 ⁸ Indeed, although the Court issued its standard order in this case after that motion was
23 filed, it is worth noting that the Court’s general practice is that “no party shall file
24 supplemental briefing without leave of court.” Order re: Rule 16(d) Sched. Conf. Set,
25 Feb. 9, 2023, at p. 3.

25 ⁹ Plaintiff objects to the incomplete exhibits to the Notice and Motion. A necessary
26 formality, but there has been a troubling pattern where Defendants have lacked in candor
before two courts. All the more reason to avoid letting them gain control of company IT
systems before there is a receiver.

1 Defendants want the Court to change that, so they can wrest practical control of
2 web systems (which they do not have) and obtain frozen money to waste on their small
3 army of attorneys and exorbitant-salaried cronies — Defendants’ recent attempts to fire
4 everyone who does real work at AFLDS show that, if given access to the money in the
5 frozen accounts, they would only use it for such purposes.

6 This underscores the fact that Defendants are actually seeking reconsideration of
7 the Court’s Minute Entry. Defendants’ apparent attempts to wield the Minute Entry as a
8 ruling on the merits giving them control of AFLDS and its assets are failing when third
9 parties read what the Court actually ordered, so Defendants ask the Court to reconsider its
10 denial of their request for injunctive relief, via their proposed order. They provide no new
11 reason that the Court should reconsider it; for the reasons explained above, it should not.

12 The Court should simply deny the proposed order. The money at one financial
13 institution is apparently safely frozen until there is a receiver. Motion Exh. A.¹⁰ And the
14 AFLDS IT services vendor [Motion Exh. B] is working to support the actual operations
15 of AFLDS; they, too, will surely comply with any direction from a receiver.

16 **II. Conclusion**

17 Defendants are not getting the Court’s message, and they are apparently only
18 reading the parts of the Minute Entry that they like. There is no reason for the Court to put
19 its stamp of approval on Defendants’ destructive and wasteful course of action. For all of
20 the reasons discussed here, Defendants’ proposed order should be rejected.

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24 _____
25 ¹⁰ It can be assumed that Defendants obtained money from other banks, because not all
26 financial institutions are mentioned. The funds at Chase bank, which Defendants transferred into some kind of personal account, are conspicuously unmentioned in their filings. A receiver can handle this, too.

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DATED this 10th day of February, 2023.

DICKINSON WRIGHT PLLC

By: /s/ Bradley A. Burns
Bradley A. Burns
Amanda E. Newman
Adin J. Tarr
1850 North Central Avenue, Suite 1400
Phoenix, Arizona 85004
Attorneys for Plaintiff

THIS DOCUMENT was electronically filed
this 10th day of February, 2023, with the
Clerk of the Court and a copy electronically
transmitted via the Clerk's office to:

Hon. Timothy J. Thomason
Maricopa County Superior Court

COPY of the foregoing emailed this same day to:

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Christopher J. Charles
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Pro hac vice counsel for Defendants

By: /s/ Nicole Francini

Exhibit 1

January 31, 2023

Mr. Bradley Burns
Dickinson Wright
1850 North Central Ave.
Suite 1400
Phoenix, AZ 85004

Sent via email bburns@dickinson-wright.com

Re: AFLDS Leadership Following Jan. 30 Court Order; Relinquishment of AFLDS Assets

Dear Brad:

As you are aware, the Court has found that Dr. Gold is not on the AFLDS Board of Directors and that the rightful Board of AFLDS consists of Joseph Gilbert, Richard Mack, and Jurgen Matthesius. Thus, the Board may now act independent from, and without interference from, Dr. Gold.

Upon receiving the Court's January 30, 2023 Order (the "Order"), the Board considered reaching out to you and your client to set up a meeting to discuss an amicable resolution to this litigation and the ongoing disputes among the parties. But then the Board became aware of Dr. Gold's appearance on Lindell TV last night and the outright false statements she has been making publicly about the Court's order (<https://rumble.com/v27tbdc-epic-dr.-simone-gold-reveals-all-in-brannon-howse-exclusive.html>). The Board has also become aware that Dr. Gold provided the personal phone numbers and email addresses of Mr. Gilbert and Mr. Matthesius to the public, endangering their well-being and safety and invading their privacy, which is additionally troubling. Dr. Gold's actions immediately following entry of the Court's Order, make it clear that she is not only not interested in complying with the Order, but also not interested in any resolution in AFLDS's best interest.

Even though the Board understands that Dr. Gold resigned from her role as President at the same time she resigned from the Board, the Board has passed a corporate resolution confirming and making absolutely clear that Dr. Gold has been fired and removed from any and all leadership roles with AFLDS. *Dr. Gold thus must immediately cease and desist representing herself as associated with, representative of, or employed by AFLDS and will no longer be paid for her services.*

Finally, this letter serves as notice that AFLDS is terminating Dr. Gold's and Mr. Strand's tenancy at will of the house located at 808 Myrtle Terrace, Naples, Florida, 34013. Therefore, they and any other residents must vacate the house by **March 2, 2023**. The home and its furnishings must be left in the condition in which the home existed as of January 30, 2023. Further, the AFLDS vehicles in Gold's possession must be turned over on February 15, 2023 by leaving them at the AFLDS team house with the keys locked inside the house. Failure to timely comply with these requirements will result in further court action for eviction and property repossession, in furtherance of the Board's responsibility for safeguarding AFLDS's charitable assets.

Sincerely,

A handwritten signature in cursive script that reads "Kellye Fabian Story".

Kellye Fabian Story

Exhibit 2

President, Dr. Simone Gold
Executive Director, Lisa Andrzejewski

SECURITY, LOGISTICS, PROCUREMENT, OPERATIONS

~~DIRECTOR: AJ Andrzejewski 05/04/2021~~
~~Chad Clark, Security/Driver 08/06/2021~~
~~Rafael Denis, Security/Driver 11/07/2021~~
~~Eliana Limpas, House Manager 01/13/21~~

DEVELOPMENT/FUNDRAISING

~~DIRECTOR: Sarah Denis 12/21/2021~~
~~Troy Brewer, CPA, Accountant/Payroll 10/26/2021~~
~~Alison Rockett, Donor Outreach 5/2/21~~
~~Sarah Denis, Scheduling 12/12/2021~~
~~Jonah Gold, Assist 10/26/2021~~
~~Eli Nelson, Shop Manager 10/26/2021~~
~~Eli Nelson, Trainee 10/26/2021~~

MARKETING

~~DIRECTOR Drew Kachurak 2/01/2021~~
~~Lauren Grace, Marketing Assistant~~
~~Ashley Hosford, Project Manager~~
~~Natalie Saari, Graphics Designer~~

WEBSITE (IT) TEAM

~~DIRECTOR Rafael Rolim, 4/01/2021~~
~~Gabriela Todano, Project Manager 4/01/2021~~
~~Jared Lewin, Assistant, 10/11/2021~~
~~Yasmin Brodas, Chief Design Officer 4/01/2021~~
~~Douglas Ramos, Senior Fullstack Developer~~
~~Antony Lubbock, Senior Frontend Developer~~
~~Luiz Fritz, Frontend Developer 4/01/2021~~
~~Ayres Michael, Backend Developer, 4/01/2021~~
~~Gabriel Petras, Backend Developer, 4/01/2021~~
~~Beatriz Michela, UI Designer, 4/01/2021~~
~~Geovana Artiz, UX Designer, 4/01/2021~~
~~Gabriela Castro, Manager/HR, 4/01/2021~~

MEDICAL

~~Dr. Dana Granberg-Nill 10/07/2021~~
~~Dr. Bryan Atkinson, 4/28/2021, Physician~~
~~Dr. Jay Flottman 1/30/2021, Physician~~
~~Dr. Peterson Pierre 11/10/2021, Physician~~
~~Dr. Jana Schmidt 06/02/2021, Naturopat~~
~~Dr. Lynn Fynn 08/01/2020, Social Media~~
~~RN Deb Diener, Nurse Liaison~~

LEGAL

~~DIRECTOR Dave Dalia 8/13/2021~~

CITIZEN CORPS

~~Coordinator Sarah Denis 12/21/2021~~
~~Tracy Forde, Alliance 8/4/2021~~
~~Charity Linch, Policy 8/21/2021~~
~~Nate Maus, Operations 11/22/2021~~
~~Chris Ulaski, Assistant 11/29/2021~~
~~Mate Maus 11/22/2021, League of Lion~~
~~Eli Nelson 10/26/2021, League of Lion~~
~~Jared Lewin 10/11/2021, League of Lion~~
~~Jonah Gold 10/26/2021, League of Lion~~

NEWS

~~DIRECTOR Mordechai Sones 3/16/21~~
~~J. Rivkah Asoulin, Operations Manager~~
~~David Heller, Frontline Research Manager~~
~~Avigail Sones, Deputy Director & Spokesperson~~
~~Caryn Lipson, Sr. News Reporter 8/1~~
~~Tzviy Brickel, Researcher/Translator~~
~~Keren Macias, South America Coordinator~~
~~Sarah Perron, Advice Columnist~~
~~Moshe Tokayer, Editor, Writer, Interviewer~~
~~Ana Selaender, Research Coordinator~~
~~Julie Ponesse, PhD, Medical Ethicist~~
~~Mark McDonald, MD, Columnist~~
~~Eliyahu Tulshiski, Legal Reporter~~

COMMUNICATIONS

~~DIRECTOR: Lisa Alexander 11/01/21~~
~~Amy Schaffert, Media Manager 12/~~
~~Mike Coudrey, Social Media Director~~
~~Hannah Oakes, Assistant 2/1/2022~~
~~Dr. Peterson Pierre, Correspondent~~
~~Sarah Denis 12/12/2021, Frontline~~
~~Mary Kate Moran 02/24/2021, Press~~
~~Chris Ulaski, Research/Writer 11/29~~
~~Dr. Chris Rake, Doc Tracy 10/15/2021~~

CREATIVE

~~John Strand 10/26/2020~~
~~Frank Addelia, Director of Photography~~
~~Amanda Schief, Creative Coordinator~~
~~Rodrigo Huerta, Manager 5/13/2021~~
~~Mitch Haerle, 11/01/2022~~