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6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
7 **IN AND FOR THE COUNTY OF MARICOPA**

8 **TRILOGY AT POWER RANCH**  
9 **COMMUNITY ASSOCIATION, AN**  
10 **ARIZONA NONPROFIT CORPORATION,**

11 **Plaintiff,**

12 **vs.**

13 **Steve Berman; and Marc Herbener,**

14 **Defendants.**

Case No. CV2025-036771

**APPLICATION FOR PRELIMINARY  
INJUNCTION**

15 I. INTRODUCTION

16 Plaintiff Trilogy at Power Ranch Community Association (“T@PR”), an Arizona nonprofit  
17 corporation and the planned community association for the Trilogy at Power Ranch master-  
18 planned active adult community in Gilbert, Arizona, respectfully applies for a preliminary  
19 injunction to protect itself and its members from ongoing and irreparable harm resulting from  
20 Defendants’ conduct.

21 Beginning in approximately May 2025 and continuing thereafter, Defendants Steve  
22 Berman and Marc Herbener, acting individually and through email accounts and distribution

1 channels under their ownership or control, circulated false and misleading communications  
2 concerning Plaintiff, its volunteer directors, employees, and community operations. These  
3 communications were widely distributed throughout the community and, at times, sent directly to  
4 Association management personnel.

5 Through this conduct, Defendants undermined confidence in Association leadership and  
6 disrupted the working relationships necessary to operate the community, thereby damaging the  
7 Association's reputation and impairing its effectiveness. Plaintiff continues to suffer operational  
8 disruption and incur legal expenses necessary to address the consequences of these actions.

9 As set forth below, Plaintiff satisfies all four factors required for issuance of a preliminary  
10 injunction under Arizona law: (1) a strong likelihood of success on the merits; (2) irreparable harm  
11 absent injunctive relief; (3) a balance of hardships that weighs strongly in Plaintiff's favor; and  
12 (4) public policy that favors protecting Plaintiff from ongoing falsehoods and interference.  
13 Plaintiff therefore respectfully requests that this Court enjoin Defendants from continuing the  
14 wrongful conduct described in the Amended Complaint pending resolution of this action.

## 15 II. FACTUAL BACKGROUND

16 T@PR is a nonprofit homeowners association governed by a volunteer board of directors  
17 elected by the community's owners pursuant to its Declaration of Covenants, Conditions and  
18 Restrictions ("CC&Rs") and Arizona law, including A.R.S. § 33-1802 et seq. Members elect  
19 directors at annual meetings and retain the statutory right to recall directors under A.R.S. § 33-  
20 1813.

21 Despite this established governance structure, Defendants Berman and Herbener have, over  
22 the past nine months, repeatedly distributed emails through a master list reaching most, if not all,

1 Association members. These emails were sent not only to residents but also to management  
2 personnel and were plainly intended to undermine operational authority and weaken confidence  
3 in those responsible for managing the community by presenting false information that creates a  
4 misleading picture of how the Association functions.

5 This conduct arose following a recall election in which several board members were  
6 removed. Rather than using lawful avenues available to members to address governance concerns,  
7 Defendants embarked on a continuing harassment campaign, using anonymous email accounts  
8 and aliases in an apparent effort to conceal their involvement, behavior which reflects awareness  
9 of the impropriety of these communications. That conduct has eroded confidence in Association  
10 leadership and strained the working relationships necessary for daily operations. The resulting  
11 disruption has forced staff to divert time from routine community management, damaged the  
12 Association's reputation, and required additional legal and administrative resources to address the  
13 ongoing fallout.

### 14 III. LEGAL STANDARD

15 A preliminary injunction is appropriate when four factors are satisfied:

- 16 1. A strong likelihood of success on the merits;
- 17 2. The possibility of irreparable harm if relief is not granted;
- 18 3. The balance of hardships favors granting the injunction; and
- 19 4. Public policy favors the injunction.

20 *Shoen v. Shoen*, 167 Ariz. 58, 63 (App. 1990). Courts apply a "sliding scale" approach,  
21 permitting an injunction where either: (1) the moving party shows probable success on the merits  
22 and the possibility of irreparable injury, or (2) the moving party demonstrates serious questions

1 going to the merits and that the balance of hardships tips sharply in its favor. *Smith v. Ariz. Citizens*  
2 *Clean Elections Comm’n*, 212 Ariz. 407, 410–11 (2006).

3 IV. ARGUMENT

4 Plaintiff satisfies each element required for issuance of preliminary injunctive relief. The  
5 evidence demonstrates not only probable success on the merits but also continuing operational  
6 hardship requiring immediate intervention to prevent further disruption of Association governance  
7 and community operations.

8 A. PLAINTIFF IS LIKELY TO PREVAIL ON THE MERITS

9 **i. Tortious interference**

10 To state a claim for tortious interference, Plaintiff must show: (1) a valid contractual or  
11 business relationship; (2) knowledge of that relationship by the defendant; (3) intentional  
12 interference causing a breach or disruption; (4) resulting damages; and (5) improper conduct.

13 *Wagenseller v. Scottsdale Memorial Hospital*, 147 Ariz. 370, 386–88 (1985). Plaintiff readily  
14 satisfies each element.

15 Plaintiff’s CC&Rs constitute a binding contract between the Association and each lot  
16 owner. See *Cypress on Sunland Homeowners Ass’n v. Orlandini*, 227 Ariz. 288, 297 (Ct. App.  
17 2011). Plaintiff also maintains operational relationships with Board members, employees,  
18 management personnel, vendors, volunteers, and residents. These relationships allow the  
19 Association to enforce its governing documents and provide orderly administration for more than  
20 two thousand residents.

21 Defendants were fully aware of these relationships. Defendant Berman previously served  
22 on the Association Board and was intimately familiar with governance and operations. Defendant

1 Herbener likewise understood community governance and distribution channels. Both Defendants  
2 nonetheless used those channels to circulate communications designed to destabilize Association  
3 operations. Despite knowing the disruption such conduct would cause, Defendants circulated  
4 emails containing false statements directed at Association leadership and community operations.  
5 These communications interfered with both public perception and internal functioning and have  
6 continued through multiple accounts and aliases, compounding disruption and preventing  
7 restoration of stability.

8 As a result, staff operations have been disrupted, management resources diverted, vendor  
9 and volunteer relationships strained, and the Association has suffered reputational and financial  
10 harm, including increased legal expenses required to mitigate ongoing disruption. Defendants'  
11 actions were both intentional and improper, and the communications at issue were neither  
12 privileged nor part of permissible community debate. Because this interference continues through  
13 ongoing email dissemination, injunctive relief is necessary, and Plaintiff is highly likely to prevail  
14 on this claim.

## 15 **ii. Publication of Injurious Falsehoods**

16 In Arizona, the defamation of a private figure requires proof of five elements: (1) The  
17 Defendant made, said, or wrote a defamatory statement of fact about the Plaintiff; (2) The  
18 statement was false; (3) The Defendant made, said, or wrote the statement to a third person; (4)  
19 The Defendant was negligent or acted with reckless disregard regarding truth or falsity; and (5)  
20 The Defendant's statement caused the Plaintiff to be damaged. *Peagler v. Phoenix Newspapers,*  
21 *Inc.*, 114 Ariz. 309 (1977).

1 Defendants distributed numerous false statements concerning Association governance,  
2 employment decisions, and financial management to most members of the community and, at  
3 times, directly to management personnel. Emails described in the Amended Complaint falsely  
4 accused management of misconduct, portrayed governance as corrupt or unlawful, and  
5 misrepresented election and operational procedures. These communications created uncertainty  
6 regarding Association authority and impaired normal operations.

7 For example, Email #20, distributed to substantially all Association members, falsely  
8 asserted that Association management knowingly underpaid an employee and misrepresented  
9 compensation and raise prospects, and further suggested that employee resignations resulted from  
10 misconduct or scapegoating rather than lawful employment decisions. The communication also  
11 accused Board members, committee members, and vendors of corruption and self-dealing and  
12 portrayed the Association's governance and financial management as dishonest and harmful to the  
13 community. See Complaint ¶¶ 258–260.

14 Email #21 similarly accused Association management of abusive and unlawful  
15 employment practices, including retaliation, intimidation, misuse of authority, and coercive  
16 compensation practices. It further portrayed Board members, volunteers, and committee  
17 participants as corrupt or discriminatory, statements that were widely disseminated within the  
18 community and predictably undermined confidence in governance while damaging operational  
19 relationships. See Complaint ¶¶ 262–266.

20 Email #22 likewise asserted that the Board of Directors was incompetent and harmful to  
21 the community, claimed that proposed policies violated constitutional rights and due process, and  
22 accused the Board of retaliation and improper litigation. The communication further suggested

1 that governance actions were secretive or unlawful and that election and recall procedures could  
2 be conducted contrary to governing documents and applicable law. See Complaint ¶¶ 279–282.

3         These statements are particularly harmful because they cast undue doubt on the legality  
4 and legitimacy of the Association’s governance and election processes. Members are thereby left  
5 uncertain about Association authority, routine operations become disrupted, and confidence in  
6 community leadership erodes. Defendants either knew these statements were false or acted with  
7 reckless disregard for their truth. These publications were not isolated incidents but part of an  
8 ongoing pattern of dissemination through multiple accounts and aliases, with emails containing  
9 false statements continuing to circulate even after the operational disruption and reputational harm  
10 they caused became evident.

11         The injury caused by these false communications is both real and ongoing. Plaintiff has  
12 been forced to divert management and Board attention away from routine governance matters in  
13 order to correct the misinformation, reassure concerned residents, and address operational  
14 confusion created by Defendants’ false statements. Staff morale has suffered, volunteers have  
15 faced increased hostility, and relationships with vendors have become strained, all of which hinder  
16 the Association’s ability to function effectively. Plaintiff has therefore sustained reputational harm  
17 as well as measurable financial losses, including the diversion of staff time and the legal expenses  
18 required to mitigate continuing damage.

19         Because Defendants continue to circulate these communications, each new publication  
20 renews and compounds the harm already inflicted. Monetary damages alone cannot restore lost  
21 confidence in governance or repair community trust once it has been undermined. Plaintiff is  
22 therefore highly likely to succeed on its claim for publication of injurious falsehood, and

1 injunctive relief is necessary to prevent further harm pending resolution of this action.

2 **iii. Hostile Housing Harassment**

3 Pursuant to 24 C.F.R. Part 100 and the federal Fair Housing Act, 42 U.S.C. § 3601 et seq.  
4 (the “Act”), harassment in housing and housing-related transactions is prohibited where such  
5 conduct is based on race, color, religion, sex, national origin, disability, or familial status. In 2016,  
6 the Department of Housing and Urban Development adopted regulations codified at 24 C.F.R. §  
7 100.600 recognizing both Quid Pro Quo and Hostile Environment Harassment in housing. These  
8 regulations further clarify that community associations have a duty to take action to stop  
9 harassment once they become aware that such conduct is occurring within the community.

10 Defendant Steve Berman engaged in a pattern of hostile housing harassment and is  
11 harassing a resident of T@PR in Email #12 and related communications disseminated within the  
12 community. These communications were not isolated commentary but part of a continuing course  
13 of conduct targeting residents in ways that interfere with their peaceful use and enjoyment of their  
14 homes. For example:

15 **Did you know?¶**

16 Mike Flemming is known as “Psycho Mike,” to his friends.° He posts on our Facebook page  
17 as Reid Flarris.° They call him “Psycho Mike” because he was given an early retirement  
18 from the police dept in Canada because he was deemed mentally unfit to carry a gun.° He  
19 wanders around Trilogy with his therapy dog, which we hope works, because he looks  
scary.° His most obvious unhinged act is living with Julie Harris, aka Julie Powers, aka Julie  
Cassavila, aka Julie Bishop, aka Julie Ames.° She has four ex-husbands, and a bad record  
of monogamy.°¶

20 The Fair Housing Act prohibits conduct that creates a hostile housing environment. 42  
21 U.S.C. § 3601 et seq.; 24 C.F.R. § 100.600. Defendant’s communications included derogatory and  
22 stigmatizing remarks targeting residents on the basis of personal attributes and circumstances

1 closely associated with protected characteristics, including disability-related needs such as  
2 reliance upon a therapy dog, as well as targeted sex-based harassment disproportionately directed  
3 toward female residents based on personal relationships. Such statements were publicly  
4 disseminated within the community, thereby exposing targeted residents to ridicule and hostility  
5 and creating an environment that interferes with their ability to comfortably reside within and  
6 participate in the community.

7         The communications were deliberately crafted to intimidate and stigmatize targeted  
8 residents, isolate them within the community, and discourage their participation in Association  
9 governance and community activities. The predictable result has been to expose those residents  
10 to public ridicule and fear, leaving them reluctant even to use common areas or attend meetings  
11 out of concern that they will again be singled out. This conduct is sufficiently severe and pervasive  
12 to constitute hostile housing harassment under federal law. As a direct result of Defendant's  
13 intentional or reckless actions, affected residents have experienced continuing intimidation and  
14 distress, and their ability to fully enjoy their housing rights has been impaired. This includes  
15 hesitation or reluctance to participate in Association meetings, committees, elections, and use of  
16 community facilities. Such consequences amount to interference with rights protected by the Fair  
17 Housing Act. The harassment is also not merely a matter of past events. The emails and related  
18 communications continue to circulate within the community, and absent judicial intervention there  
19 is every reason to expect the conduct will continue. Each renewed dissemination compounds the  
20 harm already suffered and further disrupts community stability.

21         Taken together, Defendants' communications reveal an ongoing course of conduct that  
22 interferes with Plaintiff's governance authority, strains operational relationships, and erodes trust

1 within the community. Because this conduct continues, injunctive relief is necessary to prevent  
2 further injury and halt ongoing harassment while this matter proceeds to final resolution.

3 B. PLAINTIFF WILL SUFFER IRREPARABLE HARM ABSENT RELIEF

4 Plaintiff has already suffered substantial harm, including reputational damage, diversion of  
5 staff resources, disruption of governance operations, and significant legal and administrative  
6 expenses. The injury, however, is not limited to past damage. The harm continues to escalate  
7 because Defendants persist in disseminating communications containing false and destabilizing  
8 statements, which continue to reach large portions of the community and, at times, Association  
9 management personnel. Each new message renews confusion, undermines confidence in  
10 governance, and forces staff and volunteers to divert time from routine responsibilities to restore  
11 operational stability. Without court intervention, there is every reason to expect this conduct will  
12 continue.

13 The continued circulation of false statements produces injury that monetary damages alone  
14 cannot remedy. Loss of confidence in governance authority and erosion of community trust are  
15 intangible harms that become increasingly difficult to repair as false narratives are repeated. The  
16 consequences extend beyond reputational injury. Board members and management personnel are  
17 repeatedly required to shift attention away from ordinary governance matters to respond to  
18 resident concerns and resolve disputes arising from these communications, impairing the  
19 Association's ability to fulfill its contractual and statutory obligations.

20 Ongoing accusations of corruption or unlawful conduct directed at management and  
21 volunteers also threaten employee morale and retention while discouraging residents from serving  
22 in leadership and committee roles. Because community associations depend heavily on volunteer

1 participation, declining willingness to serve creates long-term operational harm not easily  
2 addressed through monetary compensation. Vendor relationships are likewise placed at risk when  
3 governance authority is publicly portrayed as illegitimate, as vendors may hesitate to enter or  
4 continue service relationships amid community instability. Defendants' communications have also  
5 created confusion surrounding election and governance procedures, threatening the orderly  
6 conduct of elections, recalls, and other processes essential to Association operations.

7         These injuries remain immediate and ongoing. Each renewed publication triggers further  
8 disruption and requires additional effort to mitigate its effects. Monetary damages cannot restore  
9 lost confidence, volunteer participation, employee morale, or governance stability once  
10 undermined. Accordingly, Plaintiff faces continuing irreparable injury absent injunctive relief, and  
11 immediate court intervention is necessary to prevent further tortious interference, publication of  
12 injurious falsehoods, and continuing harassment pending resolution of this matter.

13         C.     THE HARDSHIPS WEIGH IN PLAINTIFF'S FAVOR

14         If injunctive relief is denied, Plaintiff will continue to suffer operational disruption,  
15 reputational injury, diversion of management and volunteer resources, and financial harm as  
16 Defendants persist in disseminating destabilizing communications. Governance operations will  
17 remain impaired and community stability will continue to deteriorate. By contrast, granting  
18 injunctive relief imposes no improper burden on Defendants. The requested injunction does not  
19 restrict lawful criticism or truthful communication. Defendants remain free to express opinions,  
20 advocate policy positions, and communicate legitimate grievances through lawful channels.

21         The relief sought is limited to preventing dissemination of knowingly false and injurious  
22 statements and communications that interfere with Association operations. Because the requested

1 relief only prevents the continued spread of false statements that harm Association operations,  
2 Defendants remain free to engage in lawful communication and criticism, making any burden on  
3 them minimal compared to the ongoing harm to Plaintiff. Accordingly, the balance of hardships  
4 tips sharply and decisively in Plaintiff's favor.

5 D. PUBLIC POLICY SUPPORTS INJUNCTIVE RELIEF

6 Public policy favors preservation of stable governance within residential communities and  
7 protection of associations' ability to perform their statutory and contractual obligations to their  
8 members. Arizona law does not protect communications designed to interfere with lawful  
9 operations through knowingly false or reckless factual assertions. Issuing injunctive relief here  
10 does not suppress legitimate speech; rather, it preserves the integrity of community governance  
11 while protecting residents from continued operational disruption caused by injurious falsehoods.  
12 Preventing the continued dissemination of false statements that undermine governance authority  
13 promotes responsible community discourse and helps ensure the continued functioning of the  
14 Association for the benefit of all residents.

15 V. CONCLUSION

16 For the foregoing reasons, Plaintiff respectfully requests that the Court issue a preliminary  
17 injunction enjoining Defendants Steve Berman and Marc Herbener, together with any persons  
18 acting in concert with them, from:

- 19 1. Authoring, publishing, or disseminating, or causing to be disseminated,  
20 communications to Association members, employees, volunteers, vendors, or  
21 management personnel that contain false or misleading statements of fact concerning  
22 Plaintiff's governance, operations, personnel, or financial management;

- 1 2. Using email accounts, aliases, or distribution channels under their ownership or control  
2 to distribute communications falsely presented as independent reporting or factual  
3 accounts concerning Plaintiff while containing injurious false statements; and  
4 3. Sending communications to Association management, personnel, vendors, or  
5 community members that disseminate false statements concerning Plaintiff in a manner  
6 that interferes with Association operations or business relationships.

7 pending final resolution of this action.

8 Plaintiff further requests such additional relief as the Court deems just and proper.

9 RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of January 2026.

10 **CARPENTER LAW FIRM**

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