

1 ANTHONY CAPOBIANCO (SBN 162551)
2 DEREK WALLEN (SBN 214477)
3 **CAPOBIANCO LAW OFFICES, P.C.**
4 41990 Cook Street, Bldg. F, Suite 2006
5 Palm Desert, California 92211
6 Telephone: (760) 568-6500
7 Facsimile: (760) 568-0100
8 acapobianco@capobiancolaw.com
9 dwallen@capobiancolaw.com

10 Attorneys for Plaintiff
11 Trilogy at La Quinta Maintenance Association

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF RIVERSIDE**

14 TRILOGY AT LA QUINTA
15 MAINTENANCE ASSOCIATION, a
16 California nonprofit mutual benefit
17 corporation,

18 Plaintiff,

19 v.

20 STRATOSPHERIC HOLDINGS 4, LLC, a
21 Michigan limited liability company; CBGM,
22 LLC, a California limited liability company;
23 JOSH GROSSMAN, an individual;
24 THOMAS BROWN, an individual; and
25 DOES 1 through 25 inclusive,

26 Defendants.

Case No. CVPS2103761

[Assigned to the Hon. Carol A. Greene]

**PLAINTIFF’S EX PARTE
APPLICATION TO ENFORCE
PRELIMINARY INJUNCTION AND
FOR AN ORDER TO SHOW CAUSE
RE CONTEMPT; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

**[Concurrently filed with Declarations
of Brian Mooney, Jim Schmid, Mickey
Brown and Derek Wallen, Request for
Judicial Notice and [Proposed] Order]**

Date: Oct. 28, 2021
Time: 8:30 a.m.
Department: 5

Complaint filed: July 22, 2021
Trial date: None

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that pursuant to California Rule of Court 3.1200 and
3 California Code of Civil Procedure Section 1209 *et seq.*, on October 28, 2021, at
4 8:30 a.m. or as soon thereafter as counsel may be heard in Department 5 of the above-
5 entitled Court, the Honorable Irma Asberry presiding, located at 4050 Main Street,
6 Riverside, California 92501, plaintiff Trilogy at La Quinta Maintenance Association
7 (“*Trilogy*”) will and hereby does apply ex parte for orders:

- 8 1. Finding that defendants CBGM, LLC (“*CBGM*”), Thomas Brown (“*Brown*”),
9 Stratospheric Holdings 4, LLC (“*Stratospheric*”) and Josh Grossman
10 (“*Grossman*” and, collectively with CBGM, Brown and Stratospheric,
11 “*Defendants*”) have violated the preliminary injunction issued by this Court dated
12 September 14, 2021 and entered on September 20, 2021 (the “*Preliminary*
13 *Injunction*”) due to their willful refusal to water the Coral Mountain Golf Course
14 in La Quinta, California (the “*Golf Course*”) and their refusal to complete the
15 necessary annual “overseeding” of the Golf Course;
- 16 2. Requiring Defendants to:
 - 17 a. Immediately resume watering of the Golf Course at normal levels as
18 previously performed;
 - 19 b. Immediately complete overseeding of the Golf Course in accordance with
20 past practice; and
 - 21 c. No later than ten days after the date of this order, certify to the Court, under
22 oath, their full compliance with orders (a) and (b) above;
- 23 3. Setting an order to show cause why:
 - 24 a. Defendants should not be held guilty of contempt for their violations of the
25 Preliminary Injunction;
 - 26 b. Fines for contempt should not be levied against Defendants to the
27 maximum extent allowed by law;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- c. Brown, Grossman and representatives of CBGM (if not Brown) and Stratospheric (if not Grossman) should not be punished for contempt to the full extent of the law; and
 - d. Defendants should not, on a joint and several basis, be ordered to reimburse Trilogy for all attorneys’ fees and costs incurred in connection with this Application and related contempt proceedings in an amount according to proof; and
4. Issuing any other sanctions in favor of Trilogy and against Defendant that the Court deems just.

As set forth in the accompanying declarations of Brian Mooney, Jim Schmid, Mickey Brown and Derek Wallen, the accompanying request for judicial notice and the attached memorandum of points and authorities, this application is made on the grounds that:

- 1. The Preliminary Injunction is a valid court order;
- 2. Defendants have actual knowledge of the Preliminary Injunction;
- 3. Defendants have the ability to comply with the Preliminary Injunction;
- 4. Defendants have shown willful disobedience of and contempt for the Preliminary Injunction; and
- 5. Defendants’ violations of the Preliminary Injunction are threatening great and irreparable harm to Trilogy homeowners.

Trilogy has not made any previous application regarding these issues. Notice of this Application was provided to all Defendants care of the following counsel of record:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Brendan Ozanne
Dawson & Ozanne
5755 Oberlin Drive, Suite 301
San Diego, CA 92121
brendan@dawson-ozanne.com
(Counsel to CBGM and Brown)

Jacoby Perez
Geraci Law Firm
90 Discovery
Irvine, CA 92618
j.perez@geracillp.com
(Counsel to Stratospheric and Grossman)

Counsel has not indicated whether Defendants will oppose this application.

This application is based on this notice; the attached memorandum of points and authorities; the verified complaint on file in this action; the concurrently filed declarations of Brian Mooney, Jim Schmid, Mickey Brown and Derek Wallen, request for judicial notice and [proposed] order; the pleadings, files and records in this action; and upon such argument and additional evidence as may be presented to the Court at or prior to the hearing on this application.

Date: October 27, 2021

CAPOBIANCO LAW OFFICES, P.C.


By: 
Derek O. Wallen
Attorneys for Plaintiff Trilogy at La
Quinta Maintenance Association

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- I. Introduction 1
- II. Factual background and procedural history 2
 - A. The origins of this dispute 2
 - B. Issuance of the preliminary injunction 4
 - C. Defendants’ copious litigation efforts related to the Golf Course 4
 - D. Defendants’ violations of the preliminary injunction 5
- III. Defendants have violated the preliminary injunction and should be ordered to comply with it immediately 7
- IV. The Court should issue an order to show cause re contempt 8
 - A. Issuance of a valid order 9
 - B. Defendants’ knowledge of the order 9
 - C. Defendants’ ability to comply 10
 - D. Willful disobedience 10
- V. Defendants should be punished to the full extent of the law 11
- VI. Trilogy is entitled to its attorneys’ fees and costs 11
- VII. The Court should award any other sanctions it deems necessary to ensure Defendants’ compliance with its orders 12
- VIII. Conclusion 12

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Cases

Automotriz Del Golfo De California S. A. De C. V. v. Resnick
(1957) 47 Cal.2d 792..... 10

Brown v. Brown
(1971) 22 Cal.App.3d 82..... 8

In re Crystal Palace Gambling Hall, Inc.
(9th Cir. 1987) 817 F.2d 1361..... 8

Katenkamp v. Superior Court
(1940) 16 Cal.2d 696..... 9

Lyon v. Superior Court
(1968) 68 Cal.2d 446..... 10

Stephen Slesinger, Inc. v. Walt Disney Co.
(2007) 155 Cal.App.4th 736..... 12

Wanke, Industrial, Commercial, Residential, Inc. v. Keck
(2012) 209 Cal.App.4th 1151..... 9

Statutes

California Code of Civil Procedure:

Section 1209(a)(5)..... 8

Section 1218..... 11

Section 1218(a) 11

Section 1219(a) 11

Treatises

6 Witkin, Cal. Proc. (5th ed. 2021) Provisional Remedies § 396 9

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction.

This case arose from a health and environmental emergency that Defendants created in July 2021 by refusing to water the Coral Mountain Golf Course in La Quinta, California (the “*Golf Course*”), which Defendants own. Defendants’ actions created, among other forms of nuisance, a 200-acre fire hazard adjacent to over 1,200 homes at the Trilogy at La Quinta common-interest development (which the Golf Course winds through). On July 23, 2021, this Court maintained the status quo by issuing a temporary restraining order (the “*TRO*”) prohibiting Defendants from such actions and from making any material changes to golf course operations. On September 14, 2021, the Court issued a preliminary injunction of identical scope (the “*Preliminary Injunction*”), finding that plaintiff Trilogy at La Quinta Maintenance Association (“*Trilogy*”) – the homeowners’ association that manages the Trilogy community – “is likely to prevail on its claims for nuisance, nuisance per se and for breach of the 2017 Golf Course CC&Rs” that govern the relationship between Trilogy and Defendants.¹

But Defendants continue to play fast and loose with the Court. They closed the Golf Course on September 20, 2021 and are again refusing to water it or complete the annual “overseeding” process that every golf course in the Coachella Valley performs in the fall. Overseeding prevents golf course grass from becoming a brown, dried-out eyesore. Defendants’ acts are a willful violation of the Preliminary Injunction that threaten irreparable harm to Trilogy homeowners. A dead and brown 200-acre golf course running through the Trilogy community threatens immeasurable harm to the

¹ As discussed below, the Golf Course CC&Rs require (among other things) that Defendants water, maintain and landscape the Golf Course pursuant to specific, articulated standards.

1 values and saleability of Trilogy homes and renders the golf course unplayable. What
2 buyer wants a house next to a 200-acre swath of dead vegetation?

3 The Preliminary Injunction prohibits such conduct. Unfortunately, Defendants
4 have no regard whatsoever for this court order, nor for the well-being of Trilogy
5 homeowners. As explained further below, time is of the essence: unless the Golf Course
6 is overseeded and rewatered *immediately*, it will be extremely difficult, and perhaps
7 impossible, to restore it to its normal state during the colder winter months ahead (the so-
8 called “snowbird” season).

9 Trilogy respectfully asks this Court for orders forcing Defendants to comply with
10 the Preliminary Injunction by overseeding and rewatering the Golf Course immediately
11 and otherwise maintaining the status quo. In addition, Trilogy asks that Defendants be
12 held in contempt of Court and punished for their callous disregard of the Preliminary
13 Injunction to prevent future violations.

14 **II. Factual background and procedural history.**

15 A. The origins of this dispute.

16 The Trilogy common-interest development in La Quinta, California consists of
17 1,238 homes, about a third of which are situated directly adjacent to the Golf Course.
18 Defendants own and operate the 18-hole Golf Course, including a golf practice facility,
19 retail shop and restaurants. As such, Defendants’ wrongful conduct has *thousands* of
20 victims – each owner of a home in Trilogy, particularly those whose homes may be listed
21 for sale or who purchased a home due to its golf course proximity.

22 In April 2015, defendant CBGM, LLC (“*CBGM*”) purchased the Golf Course.
23 Defendant Stratospheric Holdings 4, LLC (“*Stratospheric*”), a former lender on the Golf
24 Course property, recently foreclosed on a parcel known as “Lot 141,” which includes the
25 first hole of the Golf Course and its practice facility. Lot 141 also includes a water well
26 and certain water pump facilities. (CBGM owns the rest of the Golf Course.) Defendants
27

1 Thomas Brown (“*Brown*”) and Josh Grossman (“*Grossman*”) are, respectively, CBGM’s
2 and Stratospheric’s principals and controlling agents.

3 The relationship between Trilogy and Defendants is governed by Restated Golf
4 Course CC&Rs that were signed in February 2017 and recorded in April 2017 (the “*Golf*
5 *Course CC&Rs*”). (See Ex. A to Verif. Compl.) The Golf Course CC&Rs include various
6 equitable servitudes requiring Defendants to do many things to preserve Trilogy home
7 values, including watering and maintaining the Golf Course and its landscaping, all at no
8 cost to the HOA. (*Id.* at ¶¶ 6, 10, 11 and Schedule C.) Section 15(h) provides that “time is
9 of the essence” with respect to all obligations under the 2017 Restated Golf Course
10 CC&Rs.

11 In July 2021, Defendants threatened to turn off all water to the Golf Course in
12 violation of the these obligations unless Trilogy agreed to pay \$30,000 per month with a
13 \$60,000 security deposit. (Verif. Compl. at ¶ 19.) When Trilogy refused to be extorted,
14 Defendants stopped watering the Golf Course and ceased recirculating water to its lake
15 and pond facilities. (*Id.* at ¶¶ 20-22.) The Golf Course rapidly dried out and become a
16 vast fire hazard at a time when temperatures in the Coachella Valley regularly exceeded
17 110 degrees. Moreover, failing to circulate water in the lake and pond facilities turned
18 them into stagnant bodies of water that threatened large-scale mosquito vectors, algae and
19 bacteria blooms and fish kills.

20 In other words, because they wanted someone else to fund the Golf Course they
21 willingly acquired, Defendants subjected thousands of Trilogy homeowners to
22 unconscionable health and environmental threats – not to mention the threat of declining
23 home values due to the decaying Golf Course. Unable to tolerate these outrageous acts,
24 Trilogy filed suit on July 22, 2021, asserting claims for (among other things) nuisance,
25 nuisance per se and breach of the Golf Course CC&Rs.

1 B. Issuance of the preliminary injunction.

2 The day after Trilogy filed suit, it successfully applied ex parte for a temporary
3 restraining order. Over Defendants' opposition, this Court issued a TRO prohibiting
4 Defendants from:

- 5 1. Refusing to provide water service, sprinklers and irrigation to the Golf Course and
6 its adjoining areas and related improvements at normal levels as previously
7 performed;
- 8 2. Refusing to maintain and operate the recirculating water pumps and related
9 equipment at the lakes, ponds and other bodies of water on the Golf Course
10 property; and
- 11 3. Making any material changes to the Golf Course, its business or operations.

12 On July 14, 2021, the Court issued the Preliminary Injunction, which is of
13 identical scope to the TRO. (RJN at Ex. 1.) In granting the injunction, the Court found
14 that Trilogy is likely to prevail on its claims for nuisance, nuisance per se and breach of
15 the Golf Course CC&Rs. Counsel for all Defendants appeared at the hearings on the TRO
16 and Preliminary Injunction. On July 20, 2021, Trilogy served the Preliminary Injunction
17 on counsel for all Defendants in this action. (Wallen Dec. at ¶ 3; RN at Ex. 2.)

18 C. Defendants' copious litigation efforts related to the Golf Course.

19 While Defendants often claim a financial inability to operate the Golf Course they
20 willingly acquired, they have no shortage of funds to pursue litigation. For example, since
21 June 2020, CBGM has been prosecuting claims against Trilogy in a separate arbitration
22 that Trilogy initiated to enforce CBGM's obligations related to the "perimeter landscape
23 area" separating the Golf Course from Trilogy homes. A merits hearing in the arbitration
24 is set to begin in January 2022. (Wallen Dec. at ¶ 9.) In addition, CBGM has launched
25 and is actively litigating a frivolous collateral lawsuit against *Trilogy's corporate counsel*
26 and its former board president for alleged fraud in connection with the Golf Course
27 CC&Rs. (RJN at Ex. 3-4.)

1 Moreover, CBGM is currently paying \$23,000 per month to lease the restaurant at
 2 the Golf Course from an entity currently in bankruptcy called TTBMG, Inc. (RJN at
 3 Ex. 5.) The trustee in that proceeding recently requested Bankruptcy Court approval for
 4 continuation of that lease arrangement. (*Id.*) Defendants, in short, have plenty of money
 5 to pay for things they want to pay for and have never proffered evidence to suggest
 6 otherwise.² They simply hope that by acting tortiously toward Trilogy homeowners, they
 7 will force the HOA to bear the costs of operating the Golf Course that *Defendants*
 8 themselves own – never mind if they violate a court order in the process.

9 D. Defendants’ violations of the preliminary injunction.

10 Each year in the fall, every golf course in the Coachella Valley “overseeds.” This
 11 refers to a process whereby the Bermuda grass that grows on golf courses in the summer
 12 is replaced in the winter months, typically by perennial rye grass. (Schmid Dec. at ¶ 6.)
 13 Overseeding is necessary because when temperatures cool during the winter months,
 14 Bermuda grass stops growing and becomes dormant. It dries out and becomes totally
 15 brown. (*Id.* at ¶ 7.)

16 Overseeding proceeds in three stages. First, the existing Bermuda grass is cut very
 17 low, or “scalped,” and allowed to dry out. Second, the winter seed is put down on the
 18 course. Finally, there is a period of time where the golf course is rewatered so the new
 19 seed can germinate and grow. (*Id.* at ¶ 10.)

20 Failure to overseed destroys the appearance and visual aesthetics of a golf course.
 21 (*Id.* at ¶ 7.) In addition, because Bermuda grass does not grow in the winter months, the
 22 golf course does not “repair itself” as golfers play on it. (*Id.*) Areas where people drive
 23 golf carts get worn out, putting greens are damaged from ball marks and foot traffic, and
 24 greens wear out in high-use areas. (*Id.*) This essentially makes the golf course unplayable.

25
 26 ² In fact, they have refused to produce comprehensive financial information in these
 27 other pending litigation matters.

1 Time is of the essence when it comes to overseeding. If a course does not put down new
 2 seed by mid-November *at the latest*, the steadily cooling temperatures in the months that
 3 follow will impair the ability to grow new grass. (*Id.* at ¶ 11.)

4 For at least the last 14 years, and likely longer, the Golf Course has been
 5 overseeded every year, without exception. (Mooney Dec. at ¶ 2.) Recognizing this fact,
 6 Defendants previously announced that reseeded of the Golf Course would begin
 7 September 20, 2021, since which time the Golf Course has been closed and watering
 8 ceased. (*Id.*) However, Defendants have not planted new seed, and have stopped watering
 9 the summer grass. (*Id.* at ¶ 3.)

10 As a result, the Golf Course is rapidly drying out and has become an unsightly
 11 nuisance and potential fire hazard. (*Id.* at ¶ 4.) The Trilogy board has received numerous
 12 complaints about this situation from homeowners concerned that Defendants' actions are
 13 endangering property values, the saleability of homes, the attractiveness of the
 14 community and their ability to use the golf course. (*Id.*) Thus, the refusal of Defendants
 15 to complete reseeded and rewater and reopen the Golf Course is threatening irreparable
 16 harm to Trilogy's homeowners.

17 Pro-Turf International, Inc. ("*PTI*") has provided landscape maintenance services,
 18 including annual overseeding, to the Golf Course since 2013.³ (Mickey Brown Dec. at
 19 ¶¶ 2-3.) In September 2021, defendant Thomas Brown instructed PTI to oversee the
 20 Golf Course as it does every year. PTI accordingly scalped the Golf Course, which as
 21 noted is the first step in the overseeding process. Since then, however, Defendants have
 22 not paid PTI the amounts necessary for it to complete the overseeding process. PTI is
 23 willing to complete the overseeding upon payment of \$150,000 from Defendants. (*Id.* at
 24 ¶ 4, 6.) PTI has demanded that payment, and there is no evidence that Defendants cannot

25
 26 ³ PTI performs these services through its subsidiary Key Golf Management, LLC.
 27 (Mickey Brown Dec. at ¶ 2.)

1 pay it. But Stratospheric and Grossman have refused to spend money on the Golf Course.
 2 Brown and CBGM have made occasional assurances of payment but have not followed
 3 through on them. (*Id.* at ¶ 6.) So the Golf Course dies, and Trilogy home values decline.

4 PTI’s chief executive officer has informed Trilogy that *if overseeding is not*
 5 *performed within the next three to five days, it is unlikely to be successful.* (*Id.* at ¶ 7.)
 6 The existing Bermuda grass will die off, the Golf Course will turn entirely brown, and
 7 Trilogy homeowners will spend the entire winter adjacent to a dead and desiccated
 8 eyesore. *This will obviously have catastrophic effects on the saleability of homes within*
 9 *the community.*

10 On October 18, 2021, hoping to avoid contempt proceedings, Trilogy demanded
 11 that Defendants remedy their violations of the Court’s Preliminary Injunction. (Wallen
 12 Dec. at ¶ 7, Ex. 6.) They have refused. Immediate action by this Court is therefore
 13 required.

14 **III. Defendants have violated the preliminary injunction and should be ordered to**
 15 **comply with it immediately.**

16 There can be no doubt that Defendants are in violation of the Preliminary
 17 Injunction. They have stopped watering the Golf Course (Mooney Dec. at ¶ 3), which
 18 violates Section 1 of the Preliminary Injunction, prohibiting Defendants from “refusing to
 19 provide water service, sprinklers and irrigation to the Coral Mountain Golf Course at
 20 Trilogy [] at normal levels as previously performed prior to the inception of this dispute.”
 21 In addition, their refusal to overseed the Golf Course is a violation of Section 3 of the
 22 Preliminary Injunction because it is a “material change to the Golf Course, its business
 23 and operations.” The Golf Course, like every other golf course in the Coachella Valley, is
 24 overseeded every year. Defendants have thumbed their noses at the Court by their
 25 cavalier attitude to this Court’s orders.

26 There is simply no excuse for disobeying a court order, as Defendants have done.
 27 “A person fails to act as ordered by the court when he fails to take all the reasonable steps

1 within his power to insure compliance with the court’s order. It does not matter what the
 2 intent [] was when they disobeyed the court’s order. If the [party] believed that the []
 3 court incorrectly issued an order, their remedy [is] to appeal and request a stay pending
 4 the appeal. ***Absent a stay, all orders and judgments of courts must be complied with***
 5 ***promptly.***” *In re Crystal Palace Gambling Hall, Inc.* (9th Cir. 1987) 817 F.2d 1361, 1365
 6 (emphasis added).⁴ Defendants did not appeal the issuance of the Preliminary Injunction
 7 or seek writ relief, so their obligation to comply with it is absolute.

8 “Every court has power to compel obedience to its judgments and orders, and []
 9 inherent jurisdiction to oversee and enforce execution of its decrees.” *Brown v. Brown*
 10 (1971) 22 Cal.App.3d 82, 84. Defendants’ violations of the Preliminary Injunction are
 11 threatening irreparable harm to Trilogy homeowners. Therefore Trilogy respectfully
 12 requests immediate orders to bring Defendants into compliance with the Preliminary
 13 Injunction, specifically orders providing that:

- 14 • Defendants shall immediately resume full watering of the Golf Course at normal
 15 levels as previously performed;
- 16 • Defendants shall immediately complete overseeding of the Golf Course in
 17 accordance with past practice; and
- 18 • No later than ten days after the date of the Court’s order, Defendants shall certify
 19 to the Court, under oath, their full compliance with orders 1 and 2 above.

20 **IV. The Court should issue an order to show cause re contempt.**

21 Good cause exists for the Court to issue an order to show cause why Defendants
 22 should not be held in contempt for their willful disobedience of the Preliminary
 23 Injunction. Code of Civil Procedure Section 1209(a)(5) empowers the Court to punish
 24 acts, such as Defendants’, that are in “disobedience of any lawful [] order of the court.” A
 25

26
 27 ⁴ All case excerpts omit internal quotations, citations and brackets.

1 violation of an injunction constitutes contempt. 6 Witkin, Cal. Proc. (5th ed. 2021)
 2 Provisional Remedies § 396.

3 The elements of contempt are (1) a valid order, (2) knowledge of the order, (3)
 4 ability to comply with the order, and (4) willful failure to comply with the order. *Wanke,*
 5 *Industrial, Commercial, Residential, Inc. v. Keck* (2012) 209 Cal.App.4th 1151, 1168.
 6 Officers of an entity can be held in contempt for the entity’s violations, as an entity can
 7 only act through its officers and agents. *See Katenkamp v. Superior Court* (1940) 16
 8 Cal.2d 696, 700 (“an injunction against a corporation binds not only the so-called
 9 ‘corporate entity’ but also all persons who act for the corporation in the transaction of its
 10 business and have knowledge of the decree”). Here, the four elements of contempt are
 11 present beyond any doubt.

12 A. Issuance of a valid order.

13 The Preliminary Injunction is plainly a valid order. The Court issued it after full
 14 briefing on the merits and oral argument at which counsel of record for all Defendants
 15 appeared. (*See* Preliminary Injunction at 1:13-17 (documenting appearances of counsel).)
 16 The Court made appropriate findings that Trilogy was likely to prevail on the merits of its
 17 claims and that the balance of hardships favored issuance of the Preliminary Injunction.
 18 (*Id.* at 1:23-26.) The Court also found that “unless the Injunction is granted, great and
 19 irreparable injury will result to Plaintiff.” (*Id.* at 2:1-2.) The Preliminary Injunction has
 20 not been stayed, nor challenged through appellate or writ proceedings. It is therefore
 21 valid and enforceable.

22 B. Defendants’ knowledge of the order.

23 All Defendants know about the Preliminary Injunction because (a) their counsel of
 24 record appeared at the hearing at which the Preliminary Injunction was issued,
 25 (b) Trilogy subsequently served formal notice of entry of the Court’s order on
 26 Defendants’ counsel of record (Wallen Dec. at ¶ 6, Ex. 5), and (c) on October 18, 2021,
 27

1 after it became clear that Defendants were in violation of the Preliminary Injunction,
 2 Trilogy served a formal demand for compliance therewith (*Id.* at ¶ 7, Ex. 6).

3 C. Defendants’ ability to comply.

4 Defendants are certainly capable of complying with the Preliminary Injunction as
 5 it requires nothing more than that they operate the Golf Course as they always have,
 6 consistent with past practice. They have *always* overseeded the Golf Course annually,
 7 like every other golf course in the Coachella Valley. While Trilogy anticipates that
 8 Defendants may claim some form of financial hardship, this is false and disingenuous.

9 As described above, they have ample money to pay lawyers to engage in extensive
 10 litigation, *including against Trilogy’s counsel*, and to lease a restaurant on the Golf
 11 Course property for \$23,000 per month. None of the Defendants are in bankruptcy, and it
 12 is not Trilogy’s or PTI’s responsibility to finance the operation of the Golf Course (as
 13 Defendants apparently would prefer). Rather, it is the responsibility of an entity’s
 14 owners – Brown, in the case of CBGM, and Grossman, in the case of Stratospheric – to
 15 ensure that the entity is adequately capitalized.

16 Any “attempt to do corporate business without providing any sufficient basis of
 17 financial responsibility to creditors is an abuse of the separate entity and will be
 18 ineffectual to exempt the shareholders from corporate debts.” *Automotriz Del Golfo De*
 19 *California S. A. De C. V. v. Resnick* (1957) 47 Cal.2d 792, 797. As the state Supreme
 20 Court has held, “unless a defendant shows he has complied with the court's order to the
 21 fullest extent of his ability his defense of inability fails.” *Lyon v. Superior Court* (1968)
 22 68 Cal.2d 446, 451. Defendants cannot meet that burden here. ***If CBGM and***
 23 ***Stratospheric do not have adequate funds to pay \$150,000 to PTI to complete***
 24 ***overseeding, Brown and Grossman are legally obligated to provide those funds.***

25 D. Willful disobedience.

26 Trilogy has demanded that Defendants rewater the Golf Course and complete
 27 overseeding, and has informed Defendants that failure to do so violates the Preliminary

1 Injunction. (Wallen Dec. at ¶ 7, Ex. 6.) Yet they refuse. Defendants are aware of their
 2 obligations but are intentionally choosing not to comply with them. Nothing more is
 3 required to establish contempt.⁵

4 **V. Defendants should be punished to the full extent of the law.**

5 Under Code of Civil Procedure Section 1218, the Court has authority to impose a
 6 fine on each Defendant in an amount not exceeding \$1,000 payable to the Court for each
 7 separate act of contempt. In addition, under Code Section 1219(a), where as here “the
 8 contempt consists of the omission to perform an act which is yet in the power of the
 9 person to perform, he or she may be imprisoned until he or she has performed it.”
 10 Because Defendants are subjecting Trilogy homeowners to significant and irreparable
 11 hardship in violation of a clear court order, the Court should levy *all available*
 12 *punishments* to ensure their compliance and deter future violations.

13 **VI. Trilogy is entitled to its attorneys’ fees and costs.**

14 “A person who is subject to a court order as a party to the action, or any agent of
 15 this person, who is adjudged guilty of contempt for violating that court order may be
 16 ordered to pay to the party initiating the contempt proceeding the reasonable attorney’s
 17 fees and costs incurred by this party in connection with the contempt proceeding.” Cal.
 18 Code Civ. Proc. § 1218(a). In addition to the other remedies discussed above, and
 19 sanctions as discussed below, the Court should order Defendants, on a joint and several
 20 basis, to reimburse Trilogy’s attorneys’ fees and costs in connection with these contempt
 21 proceedings in an amount according to proof.⁶

22
 23 ⁵ If, for whatever reason, the Court believes that contempt is not an appropriate
 24 remedy, it should nonetheless order Defendants to comply immediately with the
 25 Preliminary Injunction, as requested, and issue appropriate sanctions for their
 noncompliance.

26 ⁶ Trilogy will file a separate motion for attorneys’ fees and costs after the contempt
 27 proceedings have concluded.

1 **VII. The Court should award any other sanctions it deems necessary to ensure**
 2 **Defendants' compliance with its orders.**


3 California courts have "inherent equity, supervisory, and administrative powers, as
 4 well as inherent power to control litigation." *Stephen Slesinger, Inc. v. Walt Disney Co.*
 5 (2007) 155 Cal.App.4th 736, 758. The range of available sanctions include "evidentiary
 6 sanctions as a remedy for litigation misconduct" and terminating sanctions for a party's
 7 "deliberate and egregious misconduct in the course of the litigation." *Id.* at 758, 762. It is
 8 clear that a mere court order is not sufficient to get Defendants' attention, so in addition
 9 to the remedies described above, Trilogy asks the Court to exercise its sound discretion to
 10 fashion appropriate sanctions against Defendants to address their serious and persistent
 11 misconduct and deter such activity in the future.

12 **VIII. Conclusion.**

13 More than 1,200 Trilogy homeowners are being held hostage by these Defendants.
 14 Even in the face of a directive from this Court, they refuse to live up to their legal duties
 15 as property owners. Decisive Court intervention is unfortunately needed to ensure that
 16 Trilogy homeowners do not see their community and home values degraded and
 17 stigmatized due to Defendants' bad-faith and illegal acts.

18 Date: October 27, 2021

CAPOBIANCO LAW OFFICES, P.C.

19
 20 By: 
 21 _____
 22 Derek O. Wallen
 23 Attorneys for Plaintiff Trilogy at La
 24 Quinta Maintenance Association
 25
 26
 27