

non-disclosure agreements in place) from former PTK employees. While these disclosures are distressing to PTK in their own right, the problem is compounded by the fact that Marek has already published some of PTK's privileged and confidential information on at least one occasion and is set to publish a book in less than two weeks, on April 3, 2025, where she promises to disclose this privileged and confidential information and more.

2. PTK files this action for a declaratory judgment and temporary restraining order to stop further dissemination and disclosure of this protected information.

3. PTK requests that discovery be conducted at Level 3 with a discovery plan by court order pursuant to TRCP 190.4.

PARTIES, JURISDICTION, AND VENUE

4. Plaintiff PTK is a nonprofit corporation organized and incorporated under the laws of the State of Mississippi with a principal place of business in Jackson, Mississippi.

5. Defendant Toni Marek is an individual who resides in Victoria, Texas.

6. This Court has jurisdiction over this action pursuant to CPRC § 37.003.

7. Venue is proper in Victoria County because Marek is an individual residing in Victoria County and may be served with process at 411 Charleston Dr., Victoria, Texas 77904, pursuant to CPRC § 15.002(a)(2).

FACTUAL BACKGROUND,

I. Marek's Relationship with PTK.

8. From April 2013 through January 11, 2014, Marek served as an International Officer for PTK. International Officers are student ambassadors of PTK and are not employees.

9. On April 20, 2022, PTK initiated an action against Honorsociety.org, Inc. ("Honor Society") in the Southern District of Mississippi (the "S.D. Miss. Action"), alleging trademark and

trade dress infringement, false advertising, and unfair competition. *See* Ex. A (PTK’s Second Amended Complaint in the S.D. Miss. Action).

10. Despite having no relevance to her, Marek began involving herself in the S.D. Miss Action as early as February 2024, likely at Honor Society’s invitation:

- a. On February 13, 2024, Honor Society produced documents to PTK in the S.D. Miss Action. Upon review of the documents, PTK discovered that dozens of these documents purported to come from Marek. These documents included screen captures of Marek’s personal email account that could have only been taken by either Marek or someone she provided access to her account. Yet, Honor Society never issued a subpoena to Marek in the S.D. Miss Action.
- b. On the S.D. Miss. Action, PTK sought two injunctions against Honor Society regarding malicious and defamatory statements it was making about PTK. In support of Honor Society’s Opposition to PTK’s Second Motion for Preliminary Injunction, Marek submitted a Declaration (once again without being subpoenaed), which Honor Society used to support its claims that certain allegations against PTK were true. *See* Ex. B (Marek’s Declaration). The district court was unpersuaded and enjoined Honor Society’s conduct and described Honor Society’s litigation tactics as “want[ing] to punch PTK in the mouth at every opportunity” and stated that its “online behavior paints a picture of a petulant cyberbully fixated on destroying a competitor.” *See* Ex. C at 27 (S.D. Miss. Action Order Granting PTK’s Second Motion for Preliminary Injunction).
- c. On January 9, 2025, Marek launched a Change.org petition, available at <https://www.change.org/p/stand-up-for-students-stop-misleading-students-toxic->

bullying-by-phi-theta-kappa-hq>, in which she parroted Honor Society's allegations of false advertising against PTK. She also referred to "reports" from a number of "whistleblowers and former PTK employees," at least one of whom had executed an NDA with PTK. *See* Ex. D (Screenshot of Marek's Change.org Petition, accessed March 25, 2025).

- d. On January 16, 2025, Marek issued an "open letter" to PTK's Board of Directors, largely parroting Honor Society's false advertising counterclaim in this case and that was likely made at the direction or guidance of Honor Society and/or its Executive Director Michael Moradian. Marek has subsequently emailed PTK's Board of Directors several times, requesting attention to her letter and comment prior to publication of her upcoming book.
- e. On January 29, 2025, Marek issued another communication, this time to one of PTK's largest grantors of scholarships, again largely parroting Honor Society's false advertising counterclaim as well as unfounded allegations of financial abuse.
- f. Also on January 29, 2025, Marek contacted PTK's insurance provider that is in part funding PTK's defense in the SD Miss. Action, attempting to call into question PTK's conduct and repeating in part Honor Society's counterclaims.
- g. On or about March 11, 2025, PTK became aware that Marek was mass email spamming community college students across the country, and including many community colleges in Texas, encouraging them to view and sign her change.org petition.

11. PTK has attempted to communicate with Marek on multiple occasions regarding her actions, postings, and her efforts to interfere in PTK's business. She has steadfastly refused to engage in any discussions or to change her behavior.

12. As a result of Marek's repeated involvement in the S.D. Miss. Action, since October 2024, PTK has attempted to serve Marek with a subpoena seeking documents and depositions of Marek.

13. Marek has repeatedly evaded service of the subpoenas, even physically fleeing from a process server to do so in violation of Texas law. Tex. Pen. Code § 38.16.

14. Marek then initiated a miscellaneous action in the S.D. of Texas, under cause number 6:25-MC-00001 (the "Misc. Action") to quash the subpoenas. On February 26, 2025, PTK filed a Motion to Compel Subpoena Compliance by Toni Marek, or For Leave for Alternative Service, Including Service by Federal Marshall in the same Misc. Action. *See* Ex. E (PTK's Motion to Compel Subpoena Compliance by Toni Marek).

15. On March 19, 2025, Marek filed her response to PTK's Motion to Compel, including multiple exhibits as a part of her filing. *See* Ex. F (Marek's Response to PTK's Motion to Compel). One such exhibit was an attorney-client privileged and/or attorney work product email communication between Lynn Tincher-Ladner, president and CEO of PTK, and members of PTK's Board of Directors, in which Tincher-Ladner discusses a deposition and deposition strategy in the S.D. Miss. Action.¹ Marek has confirmed that she received this and other privileged emails as part of a public records request response seeking all documents and communications related to PTK and Dr. Tincher-Ladner.

¹ *See* S.D. Tex. Case No. 6:25-mc-00001, ECF No. 14-4 (Ex. D) (providing the exhibit at issue in this Motion). In an effort to avoid republishing the privileged communication, that exhibit is not refiled with this Motion as part of Ex. F, but can be provided if requested by the Court.

16. PTK contacted Marek about her possession of the privileged information and requested she make herself available for a call to discuss the issue of the privileged document and that she remove the material from the Court's record. As of the filing of this petition, Marek has refused to meet and confer with PTK, therefore, on March 24, 2025, PTK filed in the Misc. Action a motion to strike and for protective order as to the privileged document attached to Marek's March 19 filing.

17. On March 25, 2025, the court in the S.D. Texas action entered an order transferring the case *sua sponte*, including PTK's Motion to Strike, to the S.D. Mississippi. *See* Ex. G (S.D. Texas Order Transferring Case).

II. Marek's Book is the Latest in her Series of Interferences.

18. In addition to all her efforts to involve herself in the S.D. Miss Action, Marek announced the release of her upcoming "free" book *Saving PTK: The Whistleblower's Fight for Truth and Change*, which purportedly in part examines PTK's "recruitment messaging" – the same messaging at issue in the S.D. Miss. Action. *See* Ex. H (Screenshot of Marek's Website, accessed March 25, 2025).

19. Upon information and belief, it is likely that Honor Society and Moradian are the impetus behind the book, and may have also provided funding for it as well.

20. According to Marek's website <andthenshespokeup.com>, her book will be available for free on Amazon.com starting April 3, 2025. *See* Ex. H.

21. According to Marek's own statements, Marek's book is based in part on information that she received through records requests that she issued to PTK's community college partners.

22. Marek has already used the information she received from those records requests in places like a Change.org petition and her website. *See* Ex. D; H.

23. Further, as described above, Marek has come into possession of inadvertently produced attorney-client privileged communications between PTK and its counsel, and Dr. Tincher-Ladner to the PTK board regarding advice from counsel, to Marek.

24. On her Change.org petition and in her press release regarding her book, Marek has also indicated she intends to rely on information from former PTK employees, some of whom have signed non-disclosure agreements. *See* Ex. D; H.

25. According to Marek's own statements, she intends to use the privileged communications and confidential information in her book, just as she has in her court filings and online websites.

CLAIM FOR RELIEF

(Declaratory Judgment Under CPRC § 37)

26. PTK repeats and realleges all of the foregoing paragraphs as if fully set forth herein.

27. A declaratory-judgment action is “an instrumentality to be wielded in the interest of preventative justice and its scope should be kept wide and liberal, and should not be hedged about by technicalities.” *Cobb v. Harrington*, 190 S.W.2d 709, 713 (Tex. 1945).

28. “A declaratory-judgment action will lie within the trial court’s subject-matter jurisdiction when a justiciable controversy exists as to the rights and status of the parties before the court for adjudication, and the requested declaration will action resolve the controversy.” *Transportation Ins. Co. v. WH Cleaners, Inc.*, 372 S.W.3d 223 (Tex. App. 2012).

29. A court has the power to “declare rights, status, and other legal relations whether or not further relief is or could be claimed.” CPRC § 37.003.

30. As a result of the acts described in the preceding paragraphs, there exists a controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that Marek has published, and intends to continue to publish, PTK's protectible confidential and privileged information, that Marek has received this information through breaches of enforceable nondisclosure agreements, and inadvertently through public records requests.

31. A judicial declaration is necessary and appropriate under CPRC § 37.003 so that PTK may ascertain its right to protect its confidential and privileged information.

32. PTK is entitled to a declaratory judgment that Marek is not entitled to possession or, nor is she entitled to publish, PTK's confidential and privileged information.

33. PTK is also entitled to temporary, preliminary and permanent injunctive relief in connection with these records and any past, present and future publication of the confidential and privileged information that is the subject of this claim. This includes the book, which is likely to contain information that is confidential and/or privileged in violation of the rights of PTK. An order should issue preventing publication of the book until such time as its content may be properly vetted and reviewed by PTK to confirm it does not include any offending confidential or privileged communications or information.

WHEREFORE, PTK requests judgment against Marek as follows:

A. Adjudging that Marek has obtained information about PTK that is confidential and protected by non-disclosure agreements as a results of breaches of those non-disclosure agreements and that Marek is not permitted to retain, publish, or disseminate the information in any manner;

B. Adjudging that Marek has obtained information about PTK that is protected by the attorney-client privilege and/or work product doctrine through inadvertent disclosure, that PTK

has taken all necessary and appropriate means to obtain the return of such information, and that Marek is not permitted to retain, publish, or disseminate the information in any manner;

C. Restraining and enjoining Marek from publishing her book on April 3, 2025 until PTK has an opportunity to review the content and ensure that its confidential and privileged information will not be unlawfully published;

D. Awarding PTK all fees, expenses, and costs associated with this action; and

E. Awarding such other and further relief as this Court deems just and proper.

Respectfully submitted, this the 26th day of March, 2025.

/s/ Tracy Betz

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