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DISTRICT COURT, ARAPAHOE COUNTY, COLORADO 7325 S. Potomac St. Centennial, CO 80112	
Plaintiff RHR INVESTMENT, LLC, a Colorado limited liability corporation v. Defendants TRIPLE J ARMORY, INC., a Colorado corporation	▲ COURT USE ONLY ▲
Attorneys for Triple J Armory, Inc. Colin C. Deihl, #19737 Nicholas M. Cassidy, #40836 Polsinelli PC 1401 Lawrence Street, Suite 2300 Denver, CO 80202 Phone No.: (303) 572-9300 Fax No: (303) 572-7883 cdeihl@polsinelli.com ncassidy@polsinelli.com	Case No. 19CV30231 Division: 21

RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Defendant, Triple J Armory, Inc. ("Triple J"), by and through counsel, Polsinelli PC, responds in opposition to the motion for preliminary injunction filed by Plaintiff RHR Investment, LLC ("RHR") as follows:

I. ROADMAP AND BACKGROUND

This action concerns Triple J's ongoing efforts to open a combination retail gun store and indoor shooting range (the "Triple J Store") in Littleton's SouthPark development. Six months

ago, the SouthPark Owners Association ("SPOA") tried to block the Triple J Store by requesting an injunction from this Court. The Court denied SPOA's request. Now the owner of the parcel adjacent to the Triple J Store, RHR, is back to try again, raising an issue SPOA already raised and asserting an argument SPOA already asserted.

No injunction should issue because, as detailed below, RHR cannot prove the injunction prerequisites outlined in *Rathke v. MacFarlane*, 648 P.2d 648, 653 (Colo. 1982). Further supporting Triple J's position is the fact that both SPOA and the City of Littleton have acknowledged that parking for the Triple J Store is approved as it currently exists.

A. RHR is asking the Court to accept an argument it already rejected.

1. On September 21, 2018, this Court held a hearing on SPOA's motion for a temporary restraining order and preliminary injunction in 18CV32126.

2. Among the issues SPOA presented was its concern over whether the Triple J Store would have adequate parking. Exhibit A, Hearing Transcript pp 9-11, 17, 39, 56-58, 67, 73-74, 82-83, 89.

3. SPOA argued it needed an injunction because if the Triple J Store was allowed to open, it would be "too late." *Id.* at 79-81.

4. After making specific findings under *Rathke*, this Court denied SPOA an injunction. *Id.* at 87-92.

5. RHR now alleges, just as SPOA did, that the Triple J Store will not have adequate parking to meet the requirements of (1) the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of SouthPark (the "SPOA Declaration"), and (2) the Grant of Reciprocal Easements and Declaration of Covenants [of] Parklane Business Park (the

"Parklane Declaration"). Compl. ¶¶ 6, 7, 55-57.

6. As a result of the purportedly inadequate parking, RHR alleges Triple J will interfere with RHR's exclusive parking spaces. Compl. ¶ 36; Pl's Mot. ¶ 26 ("RHR's right to control its exclusive parking spaces irrespective of Triple J's meddling and interference is the primary issue in this case.").

7. RHR further alleges that Triple J will "usurp the non-exclusive parking spaces for its own benefit, [to] the exclusion of and detriment to RHR." Compl. ¶¶ 30, 58.

8. Finally, RHR alleges that because Triple J's patrons will likely be carrying firearms as they cross over RHR's property, they will infringe upon RHR's no-firearms policy. Compl. ¶¶ 25-27.

9. RHR argues it must have an injunction for the same reason SPOA did, namely that once the Triple J Store fully opens, it will "be too late." Pl's Mot. ¶ 46; Ex. A, pp 79-81.

B. SPOA acknowledged the Triple J Store has adequate parking to fully open.

10. Following the denial of an injunction, SPOA and Triple J entered into a Settlement Agreement.

11. The Settlement Agreement states, in pertinent part:

> SPOA also will not seek to challenge TJA's current adherence to SPOA development standards, whether relating to parking or any other standard. TJA has represented to SPOA that it has sufficient parking to serve its business as currently proposed. SPOA specifically agrees that the amount of available parking will not be a basis for denying any approval TJA is seeking in connection with its efforts to open its business as currently proposed.

12. Pursuant to the Settlement Agreement, SPOA and Triple J filed a Stipulation for

Dismissal with Prejudice. The Court granted the stipulation on December 20, 2018.[1]

C. The City of Littleton acknowledged the Triple J Store has adequate parking.

13. On December 11, 2017, Triple J wrote to the City of Littleton requesting confirmation that its use was acceptable and the zoning was correct. In its letter, Triple J advised the City it would have 37 exclusive parking spots, 13 additional spots, and 6 separate spots for employee parking. Exhibit B, Triple J letter.

14. In a response email dated December 18, 2017, the City confirmed it had consulted Douglas County's parking requirements for indoor firing ranges and confirmed Triple J would get its confirmation letter. *Id.* at 2. The City issued the confirmation letter the same day. *Id.* at 3.

15. The City has not challenged the adequacy of parking for the Triple J Store, despite its power to do so under Littleton Zoning Ordinance § 10-4-9 ("LZO"). Exhibit C, Affidavit of JD Murphree, ¶ 2.

16. Should the City determine at some later date that parking for the Triple J Store does meet the requirements of Section 10-4-9, it has enforcement mechanisms available to it under LZO § 1-4-1, including fines.

II. ARGUMENT

Injunctive relief is within the sound discretion of the trial court, but should not be "loosely granted." *Crosby v. Watson*, 355 P.2d 958, 959-60 (Colo. 1960). Rather, injunctive relief should only be granted "sparingly and cautiously and with a full conviction on the part of the trial court of its urgent necessity." *Bill Barrett Corp. v. Lembke*, 2018 COA 134, ¶ 11 (*citing Rathke*, 648 P.2d at 653). Before RHR may obtain injunctive relief, it must establish the six

[1] As Triple J will explain further, both below and in a separate dispositive motion, the Court's denial of an injunction and the subsequent Settlement Agreement are binding on RHR.

Rathke prerequisites and must comply with C.R.C.P. 65. *High Plains Library*, ¶ 25.

A. RHR cannot satisfy the *Rathke* prerequisites.

Before a trial court may grant a motion for injunctive relief, it must find that the moving party has demonstrated:

(1) A reasonable probability of success on the merits;

(2) a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief;

(3) that there is no plain, speedy, and adequate remedy at law;

(4) that the granting of a preliminary injunction will not disserve the public interest;

(5) that the balance of equities favors the injunction; and

(6) that the injunction will preserve the status quo pending a trial on the merits.

Rathke, 648 P.2d at 653-54. Plaintiff bears the burden of showing the necessity of an injunction. *Anderson v. Applewood Water Assoc., Inc.*, 2016 COA 162, ¶ 16. If RHR is not able to satisfy even one of the *Rathke* prerequisites, the Court must deny its motion. *High Plains Library*, ¶ 25.

1. **RHR cannot demonstrate imminent irreparable harm**.

Courts have consistently noted that "[b]ecause a showing of probable irreparable harm is the single most important prerequisite for the issuance of a preliminary injunction, the moving party must first demonstrate that such injury is likely before the other requirements for the issuance of an injunction will be considered." *Dominion Video Satellite, Inc. v. Echostar Satellite Corp.*, 356 F.3d 1256, 1260 (10th Cir. 2004).

RHR asserts the Triple J Store, as presently conceived, will violate the parking

restrictions set forth in the SPOA and Parklane Declarations. Pl's Mot. ¶ 25. Specifically, RHR alleges the Triple J Store requires at least 84 exclusive parking spaces but only has 36, leaving "an overall deficit of 48 spaces." Compl. ¶ 56. RHR asserts that without a preliminary injunction, its "vested parking rights will be adversely impacted." Pl's Mot. ¶¶ 25, 29. RHR's attempt to demonstrate imminent, irreparable harm fails (1) because the alleged harm is speculative and (2) because the alleged harm is not, by RHR's admission, "irreparable."

a. *The alleged harm is speculative*.

"To constitute irreparable harm, an injury must be certain, great, actual 'and not theoretical.'" *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003) (*quoting Wisc. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)); *see also Crowe & Dunlevy, P.C. v. Stidham*, 640 F.3d 1140, 1157 (10th Cir. 2011) ("Purely speculative harm will not suffice.").

Assuming (without conceding) RHR is correct that the Triple J Store is required on paper to have more parking spaces, this does not inevitably mean the number of parking spaces will *actually* be insufficient. It is possible the Triple J Store will not attract as many customers as expected. Some of the customers may carpool or take a taxi and not use a parking space. Some may only patronize the retail portion of the store, occupying a parking spot for less time than they might have had they stayed to use the shooting range and freeing the spot for others to use.

Whatever might happen when and if the Triple J Store fully opens, it is hardly *certain* that parking for the Triple J Store will be inadequate; RHR merely speculates it will be based on

general guidelines last revised nearly a decade ago.[2] Compl. Exhibit 6 ("SPOA Guidelines"). The SPOA Guidelines do not account for the fact that part of the Triple J Store will comprise an indoor shooting range and that thousands of square feet of space will necessarily go unused by humans because, as RHR acknowledges, bullets will be flying through that empty space. Compl. ¶ 45.

Nor is it *certain* that Triple J customers will park in RHR's exclusive spaces or take up all the non-exclusive spaces; RHR merely speculates they will. Pl's Mot. ¶ 26. RHR's concerns are speculative by definition because the Triple J Store is not yet fully open and RHR cannot be sure what will actually happen when and if it does. Speculative harm will not support an injunction. *Connecticut v. Massachusetts*, 282 U.S. 660, 674 (1931) ("An injunction 'will not be granted against something merely feared as liable to occur at some indefinite time in the future.'"); *Mountain Med. Equip., Inc. v. Healthdyne, Inc.*, 582 F. Supp. 846, 849 (D. Colo. 1984) (injunction will not issue "merely to allay the fears and apprehensions of a plaintiff").

"Bare allegations of what is likely to occur are of no value since the Court must decide whether the harm will *in fact* occur. The movant must provide proof that the harm has occurred in the past and is likely to occur again, or proof indicating that the harm is <u>certain</u> to occur in the near future." *Wisc. Gas Co.*, 758 F.2d at 647 (italics in original, underlining added). Accordingly, the alleged harm is speculative and no injunction should issue.

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[2] Uber did not first go live until July 2010; Lyft did not go live until June 2012. Any update to the "Vehicular Circulation and Parking" section of the SPOA Guidelines would no doubt be wise to consider the effects of ridesharing on minimum parking requirements. Any update should also consider minimum requirements that are more particularized by specific use than simply "Retail Store" and "Office."

b. *The alleged harm is not irreparable.*

Generally, irreparable harm is defined as "certain and imminent harm for which a monetary award does not adequately compensate." *Gitlitz v. Bellock*, 171 P.3d 1274, 1279 (Colo. App. 2007). "An injury may be irreparable, therefore, where monetary damages are difficult to ascertain or where there exists no certain pecuniary standard for the measurement of the damages." *Id.*

Even if, as RHR alleges, Triple J customers do start parking in RHR's exclusive spaces, this does not constitute irreparable harm because a vehicle can always be moved.[3] As RHR admits, it has options just like any other business that provides exclusive parking; it can have offending vehicles towed, it can "use infractions" against Triple J (RHR's words), and it can file nuisance claims. Pl's Mot. ¶ 30. The same is true if Triple J customers park in the non-exclusive spaces and walk across RHR's property with firearms in tow.[4] Compl. ¶ 25. As RHR argues, it can "use infractions" against these guests. It can also sue them for trespass. *Clinger v. Hartshorn*, 911 P.2d 709, 711 (Colo. App. 1996).

RHR declares that once its "ability to use its property and exclusive parking spaces has been detrimentally impacted . . . its damages will have escalated, and yet, they will also have become even more difficult to decipher and quantify." Pl's Mot. ¶ 29. RHR does not allege any

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[3] Contrast the easy removal of vehicles from parking spaces with the removal of a tree from a plot of land. Once the tree is cut down the land cannot be restored to the *status quo ante*. *Parker v. United States*, 309 F. Supp. 593, 601 (D. Colo. 1970). The latter scenario might require an injunction until the status of the tree can be determined at trial; the former scenario does not.

[4] Triple J does not concede that patrons using the non-exclusive spaces will need to traverse RHR's property. Under Section 1.2 of the Parklane Declaration, "driveways, areas of ingress and egress, sidewalk and other pedestrian ways," and all non-exclusive Parking Areas are Common Areas, not RHR's exclusive property. Since there are only Common Areas between the non-exclusive spots and the Triple J Property, RHR fears are unfounded.

facts to support this conclusory assertion, so it is insufficient to meet RHR's burden of demonstrating imminent, irreparable harm.

3. **A plain, speedy, and adequate remedy is available at law**.

RHR asserts it "cannot wait for judgment after a trial . . . because by then it may be too late. Triple J will have . . . likely finished its buildout of the shooting range, and will at that point undoubtedly claim prejudice if the operation of the range is halted from now, after a trial." Pl's Mot. ¶ 46.

RHR does not explain why Triple J potentially claiming prejudice is relevant. If this case goes to trial on RHR's breach of covenant claim and the jury finds in RHR's favor and awards damages, RHR will not only have received adequate compensation; it will presumably be entitled to its attorney fees. Compl. ¶ 67-73; Pl's Mot. ¶ 56. Any claim of prejudice by Triple J will not alter this calculus.

RHR also ignores the availability of a declaratory judgment action to determine whether Triple J is in violation of either of the Declarations. C.R.S. § 13-51-101 *et seq.* While it is true that an action for declaratory judgment is "neither legal nor equitable," such actions do allow the court to "order a speedy hearing of an action" and "advance it on the calendar." C.R.C.P. 57(m); *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 285 (1988). RHR could then obtain "further relief" if it prevailed. C.R.C.P. 57(h); Ex. A, p. 91:2-10.

Given RHR's already-pleaded breach of covenant claim, the availability of a speedy hearing in a declaratory judgment action, and the potential for a tortious interference with contract claim, RHR has several adequate remedies available to it. Compl. ¶ 27 n.4. Accordingly, an injunction should not issue.

4. **A preliminary injunction will not serve the public interest**.

Triple J was weeks away from its Grand Opening when RHR filed this action. If the Court issues an injunction to keep Triple J from fully opening, it will disserve the public by denying it a safe, controlled environment for the exercise of Second Amendment rights. There are other shooting ranges available in the Denver metro area, but none close to the SouthPark development. Ex. C, ¶ 3. If the Triple J Store does not open as planned, Littleton residents will continue having to travel outside their community to find a safe place to shoot. *See HRP Creative Servs. Co. v. FPI-MB Entertainment, LLC*, 616 F. Supp. 2d 481, 491 (D. Del. 2009).

An injunction will also disserve the public interest by depriving the City of Littleton of the increased tax revenue that would be expected if Triple J fully opened. Likewise, an injunction would deprive prospective Triple J shooting range employees of wages they could use to purchase goods and services in the community, as well as the public of the taxes the employees would pay on those wages. *See In re Qwest Commc'ns Int'l, Inc. Sec. Litig.*, 231 F. Supp. 2d 1066, 1070-71 (D. Colo. 2002).

5. **The balance of equities does not favor an injunction**.

"When considering the balance of harms, a court must balance 'the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.'" *Colo. Christian Univ. v. Sebelius*, 51 F. Supp. 3d 1052, 1064 (D. Colo. 2014); *see also Ethicon Endo-Surgery v. U.S. Surgical Corp.*, 855 F. Supp. 1500, 1516 (S.D. Ohio 1994) ("The need for the extraordinary remedy of preliminary injunction is inconsistent with a significant delay in asserting one's claims.").

As noted above, RHR was a party defendant to 18CV32126 and its current counsel

entered his appearance three days before the hearing on SPOA's TRO/injunction motion. Even so, RHR did not proclaim its opposition to the Triple J Store or assert any arguments about parking at the hearing. Once the hearing concluded, RHR stood silently by for months as Triple J spent hundreds of thousands of dollars to ready the Triple J Store for a Grand Opening on March 9th. Ex. C, ¶ 4.

RHR offers no excuse for failing to raise its concerns at the September 21st hearing and no explanation for its delay in raising them now. *Norman v. Boyer*, 143 P.2d 1017, 1019 (Colo. 1943) (Unexplained delay in seeking "to enjoin the violation of the terms of an agreement will defeat an action for the relief sought."). If an injunction issues, it will harm Triple J far more than the lack of an injunction will harm RHR. Triple J would be unable to fully open, if at all, until after trial, which could take a year or more. CJD 08-08. Not surprisingly, Triple J's business plan did not contemplate a year-long delay in the opening of the shooting range. The shooting range is expected to be a significant source of revenue in its own right and is also expected to increase Triple J's retail sales because customers are more likely to buy firearms and accessories they are able to test.

RHR asserts enjoining Triple J from opening the shooting range "will not impose any hardship," but this is not so. Pl's Mot. ¶ 33. Every day the shooting range is delayed is a day Triple J will lose revenue. Ex. C, ¶¶ 5, 7. Additionally, now that Triple J's bank has declared its loan in default and suspended Triple J's ability to draw on the loan until the resolution of this action, Triple J's contractor is going unpaid for work it already performed. *Id.* at ¶ 6.

6. **An injunction is not necessary to preserve the status quo pending trial**.

RHR correctly notes that a preliminary injunction preserves the status quo pending the final determination of a cause. Pl's Mot. ¶ 31; *Anderson*, ¶ 15. But RHR's characterization of the status quo between the parties is incomplete. Pl's Mot. ¶ 32. First, as explained above, it is hardly certain that Triple J's customers will park in RHR's exclusive parking spaces, particularly if the spaces are adequately marked. Second, if the "last uncontested status between the parties" means the day before RHR filed its Complaint, then a complete picture of the status quo must account for the fact that on January 28, 2019, the Triple J Store was approximately five weeks away from its March 9th Grand Opening, and that Triple J had spent approximately $1.2 million by that point building out the Triple J Store. Ex. C, ¶ 4.

If an injunction issues to prevent the Triple J Store from fully opening, it will likely suffer significant damages. Ex. C, ¶¶ 7-9. Meanwhile, the worst that might happen to RHR is that some of Triple J's customers might park in RHR-exclusive spots despite signage telling them not to, and RHR has the offending vehicles towed. If RHR prevails at trial, the Court will still have the option of issuing an injunction, as the character of the RHR and Triple J Properties will not have changed. *See Erhardt v. Boaro*, 113 U.S. 537, 539 (1885) (injunction will lie where "irremediable mischief is being done or threatened, going to the destruction of the substance of the estate, such as the extracting of ores from a mine, or the cutting down of timber, or the removal of coal."). Accordingly, an injunction is not necessary to preserve the status quo and will greatly harm Triple J.

B. RHR is not entitled to an order directing Triple J to "modify and/or downsize its operations."

As an alternative to its request for "an injunction to enjoin Triple J from continuing construction and the buildout of a shooting range," RHR requests an injunction to require Triple J "to modify or downsize its operations in order to conform to the existing parking restrictions." Compl. ¶ 62; Pl's Mot. ¶ 7. Since such an injunction would require Triple J to take affirmative action rather than merely prohibit Triple J from acting, it would constitute a mandatory injunction, and is therefore disfavored. C.R.C.P. 65(f); *Goodall v. Williams*, 324 F. Supp. 3d 1184, 1192 (D. Colo. 2018); *Snyder v. Sullivan*, 705 P.2d 510, 514 n.5 (Colo. 1985) (mandatory injunctions are granted only in rare cases).

In seeking a disfavored injunction, "the movant must make a strong showing both with regard to the likelihood of success on the merits and with regard to the balance of harms." *Goodall*, 324 F. Supp. 3d at 1192 (*quoting Fish v. Kobach*, 840 F.3d 710, 724 (10th Cir. 2016)); *see also Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1259 (10th Cir. 2005) ("[D]isfavored injunctions 'must be more closely scrutinized to assure that the exigencies of the case support the granting of a remedy that is extraordinary even in the normal course.'") (*quoting O Centro Espirita v. Ashcroft*, 389 F.3d 973, 975 (10th Cir. 2004)).

RHR's allegations regarding likelihood of success on the merits cannot meet this high standard (or even the less-stringent prohibitory injunction standard) given the likelihood that RHR's claims will be barred under the doctrine of claim preclusion. As Triple J will more fully explain in a separate dispositive motion, RHR appointed SPOA as its attorney-in-fact for the purposes of enforcing the "conditions, covenants, restrictions and reservations" contained within the SPOA Declaration. Thus, when SPOA raised the parking issue in 18CV32126, tried and

failed to obtain an injunction, settled with Triple J, and then stipulated to the dismissal with prejudice of all its claims against Triple J, SPOA was acting as RHR's agent. *Willey v. Mayer*, 876 P.2d 1260, 1264 (Colo. 1994) ("attorney-in-fact" and "agent" mean the same thing). Consequently, RHR is bound by the Settlement Agreement between SPOA and Triple J, even though it is not a signatory. *Elustra v. Mineo*, 595 F.3d 699, 709 (7th Cir. 2010) ("[P]arties are bound to the actions of their chosen agent, even for such an important matter as a settlement."); *McCurry v. Sch. Dist. of Valley*, 496 N.W.2d 433, 444 (Neb. 1993) ("[I]n the principal-agent setting, it matters not how the settlement was reached; whether by release or covenant not to sue, settlement with the agent constitutes a settlement with the principal, no matter what the parties may have intended.").

RHR's claims may also be barred by equitable defenses such as estoppel or laches, as it waited for months to take action while it knew Triple J was spending hundreds of thousands of dollars to complete the Triple J Store. *E.g. Extreme Const. Co. v. RCG Glenwood, LLC*, 2012 COA 220, ¶ 29 (estoppel); *Goodall v. Williams*, 324 F. Supp. 3d 1184, 1192 (D. Colo. 2018) (laches). For these reasons, RHR cannot demonstrate a likelihood of success on the merits for a prohibitory injunction, let alone a mandatory one.

C. RHR has not complied with C.R.C.P. 65(c) and its proposed security is inadequate.

C.R.C.P. 65(c) precludes the issuance of a preliminary injunction "except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." The amount of security required is discretionary "so long as it bears a reasonable relationship to the potential costs and losses occasioned by a preliminary injunction

that is late determined to have been improperly granted." *Atmel Corp. v. Vitesse Semiconductor Corp.*, 30 P.3d 789, 796 (Colo. App. 2001) *abrogated on other grounds by Ingold v. AIMCO/Bluffs, LLC Apts.*, 159 P.3d 116, 124 (Colo. 2007).

If Triple J is enjoined from fully opening the Triple J Store, it may suffer damages in excess of ten million dollars while waiting for trial. Ex. C, ¶¶ 7-10. Rule 65 directs trial courts to require sufficient security to reimburse a prevailing party for costs and damages it may have suffered if wrongfully enjoined. It does not make any provision for reducing the required security for situations where the potential damages "will have been incurred and/or exacerbated by [the enjoined party's allegedly] willful and wrongful conduct." Pl's Mot. ¶ 53. Accordingly, if the Court is inclined to issue a preliminary injunction, Triple J asks that the amount be set at $11 million, which should be sufficient to cover its potential damages, costs, and attorney fees (recoverable by the prevailing party under Section 6.3 of the SPOA Declaration) incurred through trial. Ex. C, ¶¶ 7-10.

III. CONCLUSION

RHR is not entitled to a preliminary injunction, whether prohibitory or mandatory, because it cannot establish all of the *Rathke* prerequisites. The alleged harm RHR purportedly fears, *i.e.* Triple J customers parking in RHR-exclusive spots, is neither certain nor irreparable. RHR has adequate remedies at law, both against any offending Triple J customers (towing, infractions, nuisance and trespass claims, etc.) and Triple J itself (breach of covenant, declaratory judgment).

Nor does RHR have a reasonable probability of success on the merits because its claim is barred by contract and equitable defenses. Finally, the $100 security suggested by RHR is

woefully inadequate and would not comply with C.R.C.P. 65(c). For these reasons, Triple J asks the Court to deny RHR's request for a preliminary injunction and award Triple J its costs and attorney fees for defending against RHR's motion.

DATED this 27th day of February 2019.

Respectfully submitted,

POLSINELLI PC

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of February, 2019, a true and correct copy of the foregoing was filed and served on all counsel of record via Colorado Courts E-filing.

s/ Liz Gaskins
Legal Administrative Assistant