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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

United Federation of Churches, LLC (dba  
“The Satanic Temple”),

Plaintiff,

v.

David Alan Johnson (aka “ADJ”), Leah  
Fishbaugh, Mickey Meeham, and Nathan Sul-  
livan,

Defendants.

No. 2:20-cv-00509-RAJ

PLAINTIFF’S RESPONSE IN  
OPPOSITION TO DEFENDANTS’  
MOTION TO DISMISS FOR LACK  
OF SUBJECT JURISDICTION

**I. Introduction**

**COMES NOW** Plaintiff United Federation of Churches, LLC (dba “The Satanic Temple”) (hereinafter “TST”), by and through counsel of record, with a response in opposition to Defendants’ Rule 12(b)(1) motion to dismiss. The Court has diversity jurisdiction over the surviving state law claims. Complete diversity exists because both of TST’s members are Massachusetts residents, whereas all Defendants are Washington residents. The amount in controversy exceeds \$75,000 because a review of the permissible categories of damages suggests that a lawful verdict could issue for at least \$435,901.44.

In the course of responding to this motion, TST found that a necessary party is missing. TST’s non-profit entity (The Satanic Temple, Inc.) has suffered some of the harm alleged below. *See*

1 §§ H-J, below. As detailed in §§ L-M, the Court should join The Satanic Temple, Inc. as a plain-  
2 tiff, or should grant leave to amend the complaint.

## 3 II. Argument

### 4 A. Legal standards.

5 At issue is whether the Court has diversity jurisdiction. 28 USC § 1332; Fed. R. Civ. P.  
6 12(b)(1). The question posed is whether it is “legally impossible” for a lawful verdict to issue in  
7 the jurisdictional sum when taking the good faith allegations of the complaint as true and giving  
8 TST the benefit of all reasonable inferences. *Geographic Expeditions, Inc. v. Est. of Lhotka ex*  
9 *rel. Lhotka*, 599 F.3d 1102, 1106 (9th Cir. 2010). Defendants’ motion is a facial attack, *i.e.*, one  
10 not supported by any evidence to contest the allegations of the complaint; thus, no evidence is  
11 needed to defeat the motion. *See id.* (reversing a contrary finding). Instead, it is sufficient to state  
12 in good faith and subject to Rule 11 that TST expects the damages to exceed \$75,000. *See id.*  
13 (pleading a “reasonable, good-faith belief that the damages exceed \$75,000” was sufficient  
14 alone).  
15

### 16 B. Summary of damages.

17 To make a good-faith determination that it expects damages to exceed \$75,000, TST consid-  
18 ered the compensable injuries alleged in the complaint. Wright & Miller, 14AA Fed. Prac. &  
19 Proc. Juris. § 3702 (4th ed.). At issue are claims for: (1) tortious interference with business ex-  
20 pectancy; and (2) conversion, or trespass to chattels. (Dkt. # 31). Those theories for relief entitle  
21 TST to various categories of damages, the sum of which could exceed **\$435,901.44**. Particularly:  
22 the lost value of the Chapter website at the time of the tortious interference (\$42,973.92); the lost  
23 value of the Allies website at the time of Defendants’ tortious interference / conversion / trespass  
24 to chattels (\$1,037.52); the not-in-good-faith improved value of the Allies website at the time of  
25  
26

1 judgment (\$42,973.92-plus); profits that the Defendants wrongfully made arising out of the cause  
 2 of action (\$21,981-plus); TST's lost donations and lost profits because of the cause of action (\$1-  
 3 plus); TST's reputational damages because of the cause of action (\$1-plus); TST's attorney's  
 4 fees as consequential damages of correcting the reputational harm (\$1-plus); and punitive dam-  
 5 ages (\$326,926.08-plus)<sup>1</sup>. We substantiate each category under separate headers below.

6  
 7 **C. The parties have complete diversity.**

8 Diversity jurisdiction requires "complete diversity," *i.e.*, all plaintiffs must be residents of  
 9 different states from all defendants. *Watson v. Roff*, No. C21-1622 RSM, 2022 WL 374454, at  
 10 \*2 (W.D. Wash. Feb. 8, 2022) (citing *In re Digimarc Corp. Derivative Litig.*, 549 F.3d 1223,  
 11 1234 (9th Cir. 2008)). TST's principals are both Massachusetts residents. *See* Dkt. 34. All De-  
 12 fendants are Washington residents. *See* Dkt. 26 (2d Am. Compl.), ¶ 6. Because all plaintiffs are  
 13 diverse from all defendants, the complete diversity requirement is satisfied. Further, as detailed  
 14 under separate headers below, TST has a good-faith basis to believe that compensable damages  
 15 for the surviving claims will exceed \$75,000.

16  
 17 **D. A lost value of the Chapter website award could issue for \$42,973.92.**

18 The lost value of the Chapter website is compensable through the surviving tortious interfer-  
 19 ence claim. *See* Dkt. 31 at 24. The interference was *both* to the Chapter page and the Allies page.  
 20 *Id.*, at 23. In a tortious interference claim, damages include "pecuniary losses." Restatement (Sec-  
 21 ond) of Torts § 774A(1)(a), cmt. *b* (1979); *see also Mut. of Enumclaw Ins. Co. v. Gregg Roofing,*  
 22 *Inc.*, 178 Wash. App. 702, 315 P.3d 1143 (2013) (applying § 774A); *see also Dowd v. Iantosca,*  
 23 *27 Mass. App. Ct. 325, 335, 538 N.E.2d 33, 38 (1989) (same).*<sup>2</sup>

24  
 25  
 26 <sup>1</sup> As discussed in detail in §K below, punitive damages are available.

<sup>2</sup> There will be a conflicts of law problem regarding the issue of punitive damages. *See infra*, § K. This also raises

1 Here, the direct out-of-pocket losses includes the lost value of the Chapter page at the time  
 2 of the interference. Preliminary estimates of the Chapter page valued it at \$42,973.92 at the time  
 3 of interference. 2d Am. Compl., ¶ 77.

4 Defendants may object that TST was able to subsequently recover the page. 2d Am. Compl.  
 5 ¶ 4. But the collateral source rule prohibits the fact-finder from considering any mitigation TST  
 6 received from a third party. *Diaz v. State*, 175 Wash. 2d 457, 465, 285 P.3d 873, 878 (2012); *L.*  
 7 *v. Griffith*, 457 Mass. 349, 354–55, 930 N.E.2d 126, 131 (2010). The collateral source rule fur-  
 8 thers a policy that tortfeasors should bear the costs of their own conduct; and, if a windfall would  
 9 inevitably result from a judgment, the windfall is better assigned to the injured plaintiff than the  
 10 defendant who caused the injury. *Ibid.* Even though TST received the page back, TST is still  
 11 entitled to the value of the lost Chapter page at the time of interference because Defendants did  
 12 not return the page of their own volition. Thus, it is not impossible for a verdict to award TST  
 13 \$42,973.92 to compensate TST for Defendants’ interference with the Chapter website pursuant  
 14 to the tortious interference claim.

17 **E. A lost value of the Allies website award could issue for \$1,037.52.**

18 TST is also entitled to compensation for the value of the Allies page at the time of the tortious  
 19 interference. Restatement (Second) of Torts § 774A(1)(a), cmt. *b* (1979); *Gregg Roofing, supra*  
 20 (Washington has applied § 774A); *Dowd, supra* (so has Massachusetts). The same award is avail-  
 21 able through the conversion and trespass to chattels claims. Restatement (Second) Torts §§ 922,  
 22 927, 931 (1979); *Straka Trucking, Inc. v. Est. of Peterson*, 98 Wash. App. 209, 211, 989 P.2d  
 23 1181, 1183 (1999) (applying § 927); *Squeri v. McCarrick*, 32 Mass. App. Ct. 203, 209 n. 13, 588

24 \_\_\_\_\_  
 25 a question of whether there are any conflicts of law problems beforehand. Where possible, we cite to Massachu-  
 26 setts authority to show that there appear to be no other conflicts.

1 N.E.2d 22, 26 n. 13 (1992) (same). The value of the Allies page was \$1,037.52 at the time of the  
 2 interference/conversion. 2d Am. Compl., ¶ 77. An award for this sum could issue.

3 **F. A “bad-faith improved value” award could issue for \$42,973.92-plus.**

4 Not only is TST entitled to the value of the Allies page at the time of the conversion, TST is  
 5 also entitled to the improved value of the Allies page at the time of judgment, providing that the  
 6 Court finds either that the improved value was not the subject of a good faith mistake or that the  
 7 Defendants were TST’s agent. Restatement (Second) of Torts § 927, cmt. *f, j* (1979); *Straka*,  
 8 above; *Crawford-Brunt v. Kruskall*, 489 F. Supp. 3d 1, 3 (D. Mass. 2020); *see also* Restatement  
 9 (Second) of Torts at § 931(a), cmt. *b* and *d*; *Howard v. Edgren*, 62 Wash. 2d 884, 886, 385 P.2d  
 10 41, 42 (1963).<sup>3</sup>

11  
 12 Under § 927 cmt. *f*, any improvements the defendant makes to property are improvements to  
 13 property which is rightfully owned by another; the rightful owner is entitled to the improvements,  
 14 unless the defendant had a good faith basis to believe the property was not rightfully owned by  
 15 another. Here, Defendants knew that the business relationship between TST and Facebook had  
 16 value to TST (i.e., they did not mistake the Allies page for their own) because they publicly  
 17 bragged that they “stole” the Allies page from TST. 2d Am. Compl., ¶ 48. Any improvements  
 18 value the Defendants subsequently made to the Allies page are TST’s rightful property.

19  
 20 Under § 927 cmt. *j*, any improvements a defendant-fiduciary makes to the property of their  
 21 principal are rightfully owed to the principal as a breach of the fiduciary relationship. A “fiduci-  
 22 ary” relationship is one where there is a duty for one to act for or give advice to the other on  
 23 matters within the scope of the relationship. Restatement (Second) of Torts § 874, cmt. *a* (1979).

24  
 25  
 26 <sup>3</sup> TST could find no Massachusetts authority which agrees with or rejects the Restatement rule relied upon here.  
 There is no apparent conflict of law.

1 An agent owes fiduciary duties to their principal. *Id.* In a breach of fiduciary duty case, the agent  
 2 is liable to the principal for any wrongful profits arising out of the breach of fiduciary duty. *Id.*,  
 3 cmt. *c.* Analogizing this, § 927 cmt. *j* proffers that any improved value an agent makes to property  
 4 they took from their principal in violation of a breach of fiduciary duty is properly assigned to  
 5 the principal.<sup>4</sup>

6  
 7 Here, Defendants’ understanding of the Allies page uniquely arose from their agency rela-  
 8 tionship with TST. 2d Am. Compl., ¶¶ 17, 36. When they took their former principal’s property,  
 9 they did so in violation of their obligation to refrain from taking advantage of information en-  
 10 trusted to them as part of the agency relationship. Restatement (Second) of Agency § 387 (1958)  
 11 (generally defining the duty of loyalty); *id.* § 393 (more specifically prohibiting an agent from  
 12 competing with the principal “concerning the subject matter of his agency;” here, the “subject  
 13 matter” included the Allies page).

14  
 15 As of this writing, the Allies page now sits at nearly 21,000 followers, which exceeds the  
 16 Chapter page at the time of interference. *See* 2d Am. Compl., ¶ 30 (the Chapter page had a fol-  
 17 lowing of more than 17,000). The economic value of a social media account is directly related to  
 18 its number of followers. *See* 2d Am. Compl., ¶ 77. Thus, it is not impossible for a verdict to  
 19 lawfully award judgment for the improved value of the Allies page in excess of \$42,973.92.

20  
 21 **G. A wrongful profits award could issue for \$21,981-plus.**

22 TST is also entitled to recover the profits that Defendants wrongfully made in connection  
 23 with their theft of the Allies page. Restatement (Second) of Torts § 927, cmt. *f* and *j*; § 931, cmt.  
 24 *a* (1979) (addressing conversion and trespass to chattels, respectively); *Straka, supra*; *Kruskall,*

25  
 26 <sup>4</sup> If the Court finds that the absence of a claim for breach of fiduciary duty in the 2d Am. Compl. precludes this argument, it should grant leave to amend the complaint under Fed. R. Civ. P. 15.

1 *supra*. Defendants’ purpose in stealing the Allies page was to divert donations from TST to De-  
2 fendants’ competitor organization. 2d Am. Compl., ¶ 78. By stealing the Allies page, they goaded  
3 this legal action and for the past two years have been operating a GoFundMe page, seeking public  
4 donations to help pay for their defense.<sup>5</sup> To date, that GoFundMe has raised \$21,981. *See Exhibit*  
5 **1 hereto**. That GoFundMe page is directly traceable to the Allies page because it is “pinned” as  
6 the first post any visitor sees.<sup>6</sup> *See Exhibit 2 hereto*; Dkt. 26-3 (2d Am. Compl., Exhibit 3) (what  
7 is now called “Evergreen Memes for Queer Satanic Fiends” began as the Allies page). Because  
8 some portion of these donations are traceable to the website, it is up to the factfinder to determine  
9 how much of these donations are compensable to TST. See Restatement (Second) of Torts §  
10 548A, cmt. *a* (1977). It is not impossible for a jury to determine all of them are compensable, so  
11 this category is at least \$21,981.  
12


13  
14 Defendants also market their competitor organization’s online store through the Allies page,  
15 for which they presumably derive some amount of profit traceable to the Allies page. *See*  
16 <https://www.facebook.com/queersatanic/about/> (linking to [queersatanic.com](https://www.queersatanic.com)):<sup>7</sup>  
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24 <sup>5</sup> <https://www.gofundme.com/f/legal-fund-for-victims-of-satanic-temple1> (last visited June 5, 2022)

25 <sup>6</sup> <https://www.facebook.com/queersatanic> (last visited June 5, 2022)


26 <sup>7</sup> <https://www.facebook.com/queersatanic> (last visited June 5, 2022)

**About**[See all](#)

 Queer Satanic memes. We value liberty, bodily autonomy, and fighting unjust hierarchies. We oppose irrational, supernatural approaches to the world, l... [See more](#)

 19,168 people like this including 8 of your friends



 20,911 people follow this

 <https://queersatanic.com/>

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 [queersatanic@gmail.com](mailto:queersatanic@gmail.com)

 [Religious Organization](#)

In turn, that links to their competitor organization's online store.<sup>8</sup> Presumably, some portion of the profits from this store is traceable to the Allies page, so it is up to the factfinder to determine how much of those profits are compensable to TST. *See* Restatement (Second) of Torts § 548A, cmt. *a* (1977). But TST currently lacks any information about Defendants' online store to determine how profitable it, is or how much of the profits may be fairly traced to the Allies page. If this category is material to the Court's analysis, it should order jurisdictional discovery on the question. *See Read v. Moe*, 899 F. Supp. 2d 1024, 1028 (W.D. Wash. 2012) (jurisdictional discovery is appropriate where the information sought will aid the Court's analysis).

#### **H. A lost donations and lost profits award could issue for \$1-plus.**

TST is also entitled to an award of any lost donations or lost profits under each of the three surviving claims. Restatement (Second) of Torts § 774A, cmt. *c* and *d* (1979) (tortious interfer-

<sup>8</sup> <https://www.redbubble.com/people/queersatanic/shop> (last visited June 5, 2022).



1 ence); *id.*, § 927, cmt. *m* (conversion); *id.* § 931, cmt. *e* (trespass to chattels). Because of Defend-  
 2 ants' actions, TST has lost a portion of its donation base. *See* 2d Am. Compl., ¶ 62 (as of the  
 3 original complaint, more than two years ago, TST lost 20-30 members). TST will require an  
 4 expert opinion to determine the precise amount of lost donations and lost profits proximately  
 5 caused by Defendants' conduct. For a conservative estimate, we assume at least \$1 will be prov-  
 6 able at trial.  
 7

8 Originally, the complaint anticipated that the cause of action was primarily rooted in the De-  
 9 fendants' intentional trespass on TST's trademark rights (which are exclusively owned by United  
 10 Federation of Churches, LLC). But this category of damages implicates the interests of TST's  
 11 non-profit entity (The Satanic Temple, Inc.). The Court should either join The Satanic Temple,  
 12 Inc. as a necessary party-plaintiff, or grant leave to amend the complaint to add The Satanic  
 13 Temple, Inc. as a plaintiff. Fed. R. Civ. P. 19(a)(1)(A) (a party must be joined if "in that person's  
 14 absence, the court cannot accord complete relief among existing parties."); Fed. R. Civ. P.  
 15 15(a)(2). This argument is further developed at § L, below.  
 16

#### 17 **I. A reputational harm award could issue for \$1-plus.**

18 TST is also entitled to an award of reputational harm under each of the three surviving claims.  
 19 Restatement (Second) of Torts § 774A, cmt. *d* (1979) (tortious interference, providing that de-  
 20 fendants reasonably expected the harm to result from the interference); *id.* § 927 cmt. *m* (same  
 21 for conversion); *id.* § 931, cmt. *e* (same for trespass to chattels); *see also* Dkt. 31, at 23. Defend-  
 22 ants not only "reasonably expected" TST to suffer reputational harm, they intended that harm.  
 23 2d Am. Compl., ¶¶ 45, 87-88. As with lost donations, an expert opinion is needed to evaluate the  
 24 precise loss. For a conservative estimate, TST assumes at least \$1 will be provable at trial.  
 25  
 26

1 As discussed in § H above, this category of damages implicates the interests of TST's non-  
 2 profit entity (The Satanic Temple, Inc.). The Court should either join The Satanic Temple, Inc.  
 3 as a necessary party-plaintiff, or grant leave to amend the complaint to add The Satanic Temple,  
 4 Inc. as a plaintiff. This argument is further developed at § L, below.

5 **J. A consequential damages award for attorneys fees could issue for \$1+**

6 TST is also entitled to attorney's fees as consequential damages incurred in remedying the  
 7 disparaging statements made by Defendants in connection with their wrongful use of TST's prop-  
 8 erty. Restatement (Second) of Torts § 774A, cmt. *c* and *d* (1979) (tortious interference); *id.* § 927  
 9 cmt. *m* (same for conversion); *id.* § 931, cmt. *e* (same for trespass to chattels). More particularly,  
 10 Defendants have been very busy in the past two years, using TST's Allies page to goad third  
 11 parties into making provably false statements about TST which have a tendency to diminish  
 12 TST's reputation.<sup>9</sup> *See also* 2d Am. Compl., ¶ 89.

13 As a direct and foreseeable consequence of Defendants' misuse of TST's property, TST has  
 14 incurred and will continue incurring legal fees to vindicate its reputation in the public sphere. *See*  
 15 *The Satanic Temple, Inc. v. Newsweek Magazine LLC et al.*, no. 1:22-cv-1343 (S.D.N.Y. 2022);  
 16 compare Restatement (Second) of Torts § 435B, Illustration 2 (1965) (the unintentional conse-  
 17 quence of an intentional violation may still be compensated). For a conservative estimate, TST  
 18 assumes at least \$1 will be provable at trial.  
 19  
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24 <sup>9</sup> E.g. Julia Duin, *Newsweek*, "Orgies, Harassment, Fraud: Satanic Temple Rocked by Accusations, Lawsuit" (Oc-  
 25 tober 29, 2021); <https://www.newsweek.com/orgies-harassment-fraud-satanic-temple-rocked-accusations-lawsuit-1644042>  
 26 (last visited June 6, 2022); iilluminaughtii, *YouTube*, "Is The Satanic Temple Really An Arbiter for Jus-  
 tice?" [https://www.youtube.com/watch?v=wHxu\\_fMXHNI](https://www.youtube.com/watch?v=wHxu_fMXHNI) (last visited June 6, 2022); thesatanichousewife, Tik-  
 Tok "#TST cannot save your #abortion rights!" <https://www.tiktok.com/@thesatanichousewife/video/7094299391112138030> (last visited June 6, 2022).

1 As discussed in § H above, this category of damages implicates the interests of TST’s non-  
 2 profit entity (The Satanic Temple, Inc.). The Court should either join The Satanic Temple, Inc.  
 3 as a necessary party-plaintiff, or grant leave to amend the complaint to add The Satanic Temple,  
 4 Inc. as a plaintiff. This argument is further developed at § L, below.

5 **K. A punitive damages award could issue for \$326,926.08-plus.**

6 Last, TST is also entitled to an award of punitive damages. Doubtlessly, Defendants will  
 7 object that Washington law precludes a punitive award unless a statute authorizes it. This creates  
 8 a conflicts of law problem that must be resolved first. First TST addresses why Massachusetts  
 9 law controls. Then TST explains why a verdict could award at least \$326,689.08 in punitive  
 10 damages.  
 11

12 **1. Washington conflict of law principles apply.**

13 The punitive damages question raises a conflict of law problem, *i.e.*, one where the end result  
 14 is different under two States’ laws. *Woodward v. Taylor*, 184 Wash. 2d 911, 917, 366 P.3d 432,  
 15 435 (2016). The rule is to apply the forum State’s law to determine whether a particular legal  
 16 issue should be considered under the law of another State. *Bryant v. Wyeth*, 879 F. Supp. 2d 1214  
 17 (W.D. Wash. 2012); *Woodward v. Taylor*, 184 Wash. 2d 911, 917–19, 366 P.3d 432, 435–36  
 18 (2016). A conflict exists if an issue (here, the *quantum* of judgment) is different under the laws  
 19 of two different States. *Woodward*, 184 Wash. 2d at 917. For tort cases, that requires a heavy  
 20 reliance on the Restatement (Second) of Conflicts of Laws (1971). *Woodward*, at 915.  
 21

22 The conflicts of law problem arises here because Washington’s public policy precludes pu-  
 23 nitive damages absent an authorizing statute. *Kammerer v. W. Gear Corp.*, 96 Wash. 2d 416,  
 24 421, 635 P.2d 708, 711 (1981). Massachusetts, on the other hand, permits punitive damages  
 25 where the factfinder finds the conduct was caused by “the defendant’s evil motive or his reckless  
 26

1 indifference.” Restatement (Second) of Torts § 908 (1979); *Tryon v. Massachusetts Bay Trans-*  
2 *portation Auth.*, 98 Mass. App. Ct. 673, 686, 159 N.E.3d 177, 189 (2020).

3 The Court of Appeals of Washington has addressed a conflicts of law in the first instance.  
4 *Williams v. Leone & Keeble, Inc.*, 170 Wash. App. 696, 285 P.3d 906 (2012). It involves a two-  
5 part test, addressed in sequence below under separate headers. *Williams*, 170 Wash. App. at 705.  
6 The first prong resolves the interests between the States; the second prong resolves the interests  
7 between the parties.  
8

9 **2. The Section 6 test strongly favors applying Massachusetts law.**

10 The first prong resolves the States’ respective interests in this dispute by applying the seven-  
11 factor “Section 6” test. *Williams*, 170 Wash. App. at 705; Restatement (Second) of Conflict of  
12 Laws § 6(2)(a)-(g) (1971). Each factor is detailed below but, to summarize, the test strongly  
13 favors Massachusetts with a score of 5-1-1; or, if the Court finds that factor 2 is neutral, 4-2-1.  
14

15 *First*, the Court should consider which State has greater needs on the issue. *Id.* The remedy  
16 is at issue, and Massachusetts has the greater interest in providing TST a remedy because TST is  
17 headquartered there. This factor weighs in favor of Massachusetts.

18 *Second*, the Court should ask if the forum State has *any* interest on the matter; if so, this factor  
19 is neutral. Restatement (Second) of Conflict of Laws § 6(2)(a)-(g), cmt. *e.* On the narrow issue  
20 of remedy, Washington has no interest on the matter. But it is fair to point out that Washington  
21 has a public policy to protect Defendants from the consequences of their evil motive absent an  
22 authorizing statute. This factor either weighs in favor of Massachusetts, or it is neutral.

23 *Third*, the Court should try to apply the general rule among the several States. *Id.*, cmt. *f.*  
24 Massachusetts is among the consensus of the several States in its willingness to award punitive  
25  
26

1 damages. See Restatement (Second) of Torts § 908 (1979). This factor weighs in favor of Mas-  
2 sachusetts.

3 *Fourth*, the Court should apply the law that most protects justified expectations. Restatement  
4 (Second) of Conflict of Laws § 6(2)(d). In tort, all parties are presumed to be acting without  
5 giving thought to the legal consequences of their conduct or to the law that may be applied. *Id.*,  
6 cmt. *g*. This is neutral.

7  
8 *Fifth*, the Court should apply the law of the State with the better rationale. *Id.*, cmt. *h*. Mas-  
9 sachusetts has the better rationale because it best furthers the irreducible purpose of the civil  
10 courts to provide a remedy for private wrongs. U.S. Const. Amend. I (“Congress shall make no  
11 law...abridging...the right of the people...to petition the Government for a redress of griev-  
12 ances.”) The purpose in having public remedies for private wrongs is to induce injured parties  
13 and their clan to seek relief from courts rather than resorting to violent means of self-help. Re-  
14 statement (Second) of Torts § 901, cmt. *c* (1979). Punitive damages not only deter defendants  
15 from engaging in wrongful conduct, they deter plaintiffs from engaging in violent retribution in  
16 kind. *Id.*

17  
18 States that provide for punitive damages posit that a given harm is made worse when the  
19 defendant intended to cause the harm. Punitive damages are there to deter an evil intent. Wash-  
20 ington disagrees with the premise of the common consensus, positing instead that courts are there  
21 to provide a remedy for the wrong; and, if punishment is to be done, then it should be done  
22 through the criminal courts.

23  
24 This point should go to Massachusetts. Washington’s framework uses an axe to do the job of  
25 a scalpel. The factfinder will hear evidence and determine whether *these* Defendants caused *this*  
26 harm with an evil intent. There are even legal challenges Defendants can raise to the amount of

1 punitive damages. It is most efficient to resolve the societal harm caused by Defendants' actions  
2 in a single case, presented by these parties, because these two parties have the greatest competing  
3 interests in the question.

4 *Sixth*, the Court should consider which State's law furthers certainty, predictability, and uni-  
5 formity of result. *Id.*, cmt. *i*. People know that stealing is bad. That isn't just a heady proposition  
6 of property law, it's a basic moral tenet. People know that society deters stealing by punishing  
7 thieves. Punitive damages further the general societal preference to punish thieves. This factor  
8 weighs in favor of Massachusetts.

9  
10 *Seventh*, the Court should apply the law of the State that has easier law. This point goes to  
11 Washington.

12 In summary, Massachusetts has a supermajority of the points on the first prong. TST submits  
13 that there is no need for the Court to discuss "prong two" when disposing of the motion because  
14 the first prong should leave no doubt that Massachusetts law controls. *Williams*, 170 Wash. App.  
15 at 705. We include briefing on prong two so the Court can have full briefing on the issue.

### 16 17 **3. The applicable Restatement test also favors applying Massachusetts law.**

18 The second prong resolves the issue through the lens of the parties' dispute. *Williams*, 170  
19 Wash. App. at 706; Restatement (Second) of Conflict of Laws § 145 (1971). The test involves  
20 addressing four factors. Restatement (Second) of Conflict of Laws § 145(2) (1971). Each is  
21 discussed in turn, but the final score will strongly favor Massachusetts, at 3-1-0. Depending on  
22 the second factor, the single point is either neutral or it favors Washington.

23 *First*, the Court should determine the law of the State where the injury occurred. *Id.*, cmt. *e*.  
24 In turn, that requires applying different tests depending on the kind of harm. *Id.*, at §§ 146-155.  
25  
26

1 At issue are property wrongs (stolen property, and all pecuniary damages therefrom) and personal  
 2 wrongs (reputational harm). The applicable tests refer back to the “Section 6” test, which we  
 3 resolved above to be strongly in favor of Massachusetts. Restatement (Second) of Conflict of  
 4 Laws §§ 147, 150 (1971); *see also id.* § 146. This point goes to Massachusetts.

5 *Second*, the Court should determine which State’s law applies to the conduct that caused the  
 6 injury; particularly if the rule involved is to deter misconduct, but not if it encourages defendants  
 7 to conduct their activities in a State whose tort rules are favorable. *Id.*, at § 145(2)(b), cmt. *e.* The  
 8 first and second clauses suggest this point should go to Washington, but the third clause suggests  
 9 it should go to Massachusetts because Defendants could have just as easily stolen any other Con-  
 10 gregation’s<sup>10</sup> page. This point is either neutral, or goes to Washington.

11 *Third*, the Court should balance the domicile, residence, nationality, place of incorporation  
 12 and place of business of the parties. *Id.* Issues of residency are particularly important where the  
 13 harm is felt in several states, where the harm is financial in nature, and where the plaintiff does  
 14 little or no business in the forum state. *Id.*, cmt. *e.* TST suffered reputational losses in states other  
 15 than Washington and Massachusetts. 2d Am. Compl. ¶ 13. TST complains of pecuniary losses.  
 16 2d Am. Compl. ¶ 78. And TST’s business in the forum State is limited to one of very many  
 17 Congregations. 2d Am. Compl. ¶ 13. All three clauses favor Massachusetts, so point to Massa-  
 18 chusetts.  
 19  
 20  
 21

22 *Fourth*, the Court should apply the law of the State where the relationship, if any, between  
 23 the parties is centered. Restatement (Second) of Conflict of Laws § 145, cmt. *e* (1971). Where  
 24 there is a multistate reputational injury or multistate financial loss, the plaintiff’s domicile is the  
 25

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26 <sup>10</sup> During this litigation, TST has reorganized its administrative structures. “Chapters” are now “Congregations.”

1 “single most important contact for determining the state of applicable law.” *Id.*, cmt. *f.* The  
2 agency relationship between the parties was subject to centralized control in Massachusetts. 2d  
3 Am. Compl. ¶ 13. And, Defendants’ purpose in stealing TST’s websites was to form a competitor  
4 organization and to harm TST’s reputation and bottom line *everywhere*, not just in Washington.  
5 2d Am. Compl., ¶¶ 45, 87-88. This point goes to Massachusetts.  
6

7 In summary, Massachusetts has a supermajority of points under prong two and benefits from  
8 “the most important contact,” which is the plaintiff’s domicile. Because both prongs of the test  
9 strongly favor applying Massachusetts law, a lawful judgment for punitive damages can issue.

#### 10 **4. Availability of punitive damages.**

11 Punitive damages are available wherever the jury finds that the injury is “outrageous, because  
12 of the defendant’s evil motive or his reckless indifference.” *Tryon*, 98 Mass. App. Ct. at 686.  
13 They are available in any measure, subject to a due process challenge based on (1) the degree of  
14 reprehensibility; (2) the ratio of the punitive award to the actual harm; and (3) similar civil or  
15 criminal penalties for comparable misconduct. *Clifton v. Massachusetts Bay Transp. Auth.*, 445  
16 Mass. 611, 623, 839 N.E.2d 314, 323 (2005) (applying *BMW of N. Am., Inc. v. Gore*, 517 U.S.  
17 559, 116 S. Ct. 1589, 134 L. Ed. 2d 809 (1996)).  
18

19 *First*, Defendants engaged in their culpable conduct with the highest degree of reprehensibil-  
20 ity. They purposefully took advantage of a position of trust to cause financial and reputational  
21 harm to their former principal and to create a competitor organization.  
22

23 *Second*, without reducing the constitutional concern into a “simple mathematical formula”  
24 *Gore*, 517 U.S. at 582, quadruple the harm seems to be “close to the line.” *State Farm Mut. Auto.*  
25 *Ins. Co. v. Campbell*, 538 U.S. 408, 425, 123 S. Ct. 1513, 1524, 155 L. Ed. 2d 585 (2003).  
26



1 *Third*, triple damages are available as a sanction in the similar misconduct of a dilution claim.  
2 *See* 15 USC § 1125(c). We are mindful that the Court rejected application of the dilution claim,  
3 but the test only requires that the sanction be “similar.” The dilution claim is similar because, as  
4 here, it involves a defendant’s unprivileged use of the plaintiff’s intellectual property which  
5 causes harm to the plaintiff’s business interests. If the Court is unpersuaded on this point, the  
6 *Gore* Court which notes that a 700-year study suggests that triple damages is the normal punitive  
7 award. *Gore*, 517 U.S. at 559, f. 33; (citing David G. Owen, *A Punitive Damages Overview:  
8 Functions, Problems and Reform*, 39 Vill. L. Rev. 363 (1994)).

9  
10 For sake of simplicity, and subject to subsequent refinement, we apply a punitive award not  
11 in excess of 3x the compensatory damages detailed above. As detailed above, it is not-impossible  
12 for the sum of compensatory damages to exceed \$108,972.36. Multiplying the compensatory  
13 damages by three yields \$326,926.08. A lawful verdict could award that punitive sum to TST.  
14

15 **L. A motion is forthcoming to add The Satanic Temple, Inc. as a plaintiff.**

16 As alluded to at §§ H-J, above, researching and writing this response led TST to find that a  
17 necessary party-plaintiff is missing. *See* Fed. R. Civ. P. 19(a)(2). Defendants’ complained-of  
18 wrongful conduct caused The Satanic Temple, Inc. to lose income, suffer compensable reputa-  
19 tional harms, and suffer consequential damages in the form of attorneys fees in rectifying the  
20 reputational harms. Because The Satanic Temple, Inc. is not currently a plaintiff, the Court can-  
21 not afford complete relief among the existing parties. *Id.* Joinder is required, and it would not  
22 defeat complete diversity because The Satanic Temple, Inc. is a Massachusetts resident for pur-  
23 poses of the diversity statute. *Id.* The Court should grant leave to amend. Fed. R. Civ. P. 15(a)(2).  
24

25 Counsel for TST raised this issue to opposing counsel as soon as it became apparent that The  
26 Satanic Temple, Inc. was a necessary party, requesting that Defendants consider stipulating to a

1 third amended complaint. Defense counsel responded with an objection to timeliness. But, absent  
2 an argument that the applicable statutes of limitations have passed or that there is no good cause  
3 to amend the scheduling order, there is no ground for a timeliness objection.

4 The limitations periods for claims arising from the Chapter and Allies pages have not run.  
5 See RCW 4.16.080 (all three surviving claims are subject to a three-year statute); *Woods View*  
6 *II, LLC v. Kitsap Cnty.*, 188 Wash. App. 1, 20, 352 P.3d 807, 816 (2015) (tortious interference);  
7 *Crisman v. Crisman*, 85 Wash. App. 15, 18, 931 P.2d 163, 165 (1997) (conversion); *Woldson v.*  
8 *Woodhead*, 159 Wash. 2d 215, 219, 149 P.3d 361, 363 (2006). The *Woldson* Court explains that  
9 TST has a new tort claim for every day that Defendants continue trespassing on TST's property  
10 rights. *Id.* The three-year statute only bars recovery of damages more than three years before the  
11 complaint, it does not bar the complaint in full. *Id.*

12 And there being no scheduling order, there is no need to argue "good cause" to amend the  
13 scheduling order. The Court should freely grant leave to amend as justice requires. Compare Fed.  
14 R. Civ. P. 16(b)(4), 15(a)(2) ("good cause" is required to amend the scheduling order, not to  
15 amend the complaint). Justice requires an amendment because a necessary plaintiff is missing. If  
16 the Court denies leave to amend, that will require the courts to handle two lawsuits instead of  
17 one.

18 The rules permit Defendants to file multiple motions to dismiss, but not to complain that it is  
19 taking too long to resolve their piecemeal objections. They are free to develop a laches defense  
20 on the merits, but a timeliness objection to a third amended complaint would be unfounded for a  
21 case which remains at the pleadings stage. See Fed. R. Civ. P. 15(a)(2). Because LCR 15 requires  
22 a proposed amended complaint, this section is intended to simply apprise the Court that the mo-  
23 tion is unavoidable and forthcoming.  
24  
25  
26



1 And: /s/ Matthew A. Kezhaya  
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6 **CERTIFICATE OF SERVICE**

7 I hereby certify that on the 6th day of June, 2022, I electronically filed PLAINTIFF'S  
8 RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS SECOND  
9 AMENDED COMPLAINT with the Clerk of the Court using the CM/ECF system, which will  
10 send notification of such filing to all parties of record. Signed in Seattle, Washington, on the 6th  
11 day of June, 2022. s/ Benjamin Justus