

The Honorable Richard A. Jones

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED FEDERATION OF CHURCHES,
LLC d/b/a THE SATANIC TEMPLE,

Plaintiff,

v.

DAVID ALAN JOHNSON, an individual;
LEAH FISHBAUGH, an individual; MICKEY
MEEHAM, an individual; and NATHAN
SULLIVAN, an individual,

Defendants.

No. 2:20-cv-00509-RAJ

**DEFENDANTS' OPPOSITION
TO PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

NOTED ON MOTION
CALENDAR:
December 16, 2022

I. INTRODUCTION

As this Court is aware from pleadings and briefings over the last two and a half years, this case arises from a dispute between a religious organization, Plaintiff United Federation of Churches, LLC d/b/a The Satanic Temple (“The Satanic Temple” or “TST”), and four of its former members, Defendants, regarding TST’s displeasure with Defendants’ critical views about TST’s tenets and practices. TST’s Motion for Preliminary Injunction (“Motion”) is part of its ongoing attempt to silence Defendants. As with many of TST’s claims against Defendants that have been dismissed as a matter law, this Motion, too, lacks all merit. TST has not shown, and cannot show, the required elements for the extraordinary remedy of a preliminary injunction. For example, it cannot show that it will succeed on the merits of its common law claims that Defendants have wrongfully converted a Facebook page (the “Memes Page”¹). Far to the contrary, TST expressly told Defendants over two and a half years ago that they could have and use the Memes Page “free and clear and we’ve [TST] no desire to claim it.” Despite being fully aware of this fatal exculpatory evidence, TST does not even mention it in its Motion.

TST also can’t show that it will suffer irreparable harm in the absence of preliminary relief. Not only did TST give Defendants express permission to have and use the Memes Page “free and clear,” it waited for over **two and a half years** to bring this Motion, during which time it has been fully aware of Defendants’ ongoing use of the Memes Page. This delay alone proves false any claim of imminent or irreparable harm. Moreover, TST does not assert any conversion-based damages for the alleged conversion of the Memes Page. Instead, it attempts improperly to relitigate its dismissed defamation claim by arguing that it is damaged by the content being posted on the Memes Page and in other social media.

The true purpose of TST’s meritless Motion (filed the night before Thanksgiving after a two and a half year wait) is to harass Defendants and drive up their legal fees. TST knows the Defendants have limited resources to litigate this dispute and, as its attorney has publicly stated,

¹ In the Motion and its pleadings, TST refers to the Memes Page as the “Allies page.”

1 TST is using this litigation with the hope that the attorneys' fees in this case “squeeze[] every last
 2 penny from you living corpses” [referring to Defendants]. Declaration of David Johnson in
 3 Opposition to Plaintiff’s Motion for Preliminary Injunction (“Johnson Decl.”) ¶ 18 & Ex. 6
 4 (emphasis added). More recently, just days before filing this Motion, TST’s attorney again publicly
 5 acknowledged using this litigation for the purpose of harassing Defendants, stating in a public
 6 Tweet:

7 **Are these fuckwits still talking about me?** Grow up and file an answer so I can
 8 get at your financial records. **I’m coming for you.** Tell the judge on me again, I
 double dare you.

9 *Id.* ¶ 20 & Ex. 8 (emphases added).² Given TST’s own blatant, public statements of an improper
 10 purpose, it is impossible to conclude other than that TST is improperly using this litigation to
 11 harass Defendants until they are bled dry through legal fees.

12 Finally, this Motion is improper because Defendants’ Motion to Dismiss for Lack of
 13 Subject Matter Jurisdiction (Dkt. No. 33) is currently pending. The Court should first determine if
 14 it will retain jurisdiction over this case before deciding whether it will issue an injunction.

15 For these reasons and the reasons set forth below, The Satanic Temple’s Motion must be
 16 denied.

17 II. FACTS

18 A. Procedural History

19 The crux of this lawsuit is TST’s unhappiness with Defendants for posting critical
 20 comments about TST’s tenets and practices on various social media. TST has filed three
 21 complaints in this case. In its original Complaint, TST asserted federal question jurisdiction arising
 22 from federal claims and supplemental jurisdiction over state law claims, including claims for
 23 defamation, conversion, and tortious interference. Complaint (Dkt. No. 1). This Court granted
 24

25 ² The comment about “[t]ell the judge on me again” appears to be a reference to the fact that in its
 26 Reply in Support of Motion to Dismiss Defendants previously alerted the Court to TST’s public
 statement of improper purpose through Mr. Kezhaya’s statement regarding “squeez[ing] every last
 penny from you living corpses.” Defendants’ Reply in Support of Motion to Dismiss (Dkt. No. 37)
 at 1, 6, 12.

1 Defendants' motion to dismiss TST's Complaint for failure to state a claim upon which relief can
 2 be granted, dismissing all claims with leave to amend except for TST's defamation claim, which
 3 was dismissed with prejudice. Order Granting Motion to Dismiss (Dkt. No. 20). TST moved for
 4 reconsideration of the Court's dismissal of the defamation claim. Motion for Reconsideration (Dkt.
 5 No. 21). This Court denied that motion, reaffirming the dismissal of TST's defamation claim.
 6 Order Denying Motion for Reconsideration (Dkt. No. 30).

7 TST then filed a First Amended Complaint, which re-asserted certain federal claims and
 8 included three state law claims. First Amended Complaint (Dkt. No. 22). Following a pre-motion
 9 to dismiss conference, the parties stipulated to permitting TST to amend its complaint yet again,
 10 which this Court approved. *See* Stipulated Motion for Leave to File Second Amended Complaint
 11 (Dkt. No. 24); Minute Order (Dkt. No. 25). TST filed its Second Amended Complaint ("SAC") in
 12 May of 2021. *See* SAC (Dkt. No. 26). In its SAC, TST re-asserted certain federal claims and sought
 13 supplemental jurisdiction over its state law claims, including a state common law claim for
 14 conversion/trespass to chattels. *Id.* Defendants successfully moved to dismiss the remaining
 15 federal claims. Order Granting in Part and Denying in Part Defendants' Motion to Dismiss Second
 16 Amended Complaint (Dkt. No. 31).

17 Because the operative complaint is now devoid of any claims under federal law and a
 18 sufficient amount is not in controversy to invoke diversity jurisdiction, on May 13, 2022,
 19 Defendants moved to dismiss the SAC for lack of subject matter jurisdiction, asking the Court to
 20 dismiss TST's remaining state law claims without prejudice and permitting TST to renew those
 21 claims (should it wish) against Defendants in King County Superior Court.³ Dkt. No. 33. The
 22 Motion to Dismiss for Lack of Subject Matter Jurisdiction is still pending.

23
 24
 25 ³ Because the Court granted leave to file an amended complaint as to certain of the dismissed
 26 federal claims, *see* Dkt. No. 31 at 32-33, which TST did not do within the permitted time,
 Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction was timely under LCR
 12(a)(1).

1 **B. Facts Relating to the Memes Page**

2 **1. Creation of the Memes Page**

3 In November of 2019, TST-WA’s Chapter Head (Leah Garvais, who goes by the name Siri
4 Sanguine) and TST-WA’s Media Liaison, Paul Case (who goes by the name Tarkus Claypool),
5 expelled a TST member and Co-Chapter Head who had been leading an informal group called the
6 South Sound Satanists. Johnson Decl. ¶ 4. The South Sound Satanists were an unofficial TST
7 group that did not have official chapter status. *Id.* ¶ 5. The South Sound Satanists, led by the
8 expelled member, used both a Facebook page and Facebook group that was originally called
9 “South Sound Satanists: Friends of TST.” *Id.* The South Sound Satanists page was largely inactive.
10 *Id.* ¶ 7. For the period of July 2019 through November 2019, there were only three public posts on
11 the page. *Id.* After the expulsion of the member who ran the page, from November 11 through
12 December 24, 2019, there were no posts at all. *Id.* From November to December of 2019, TST-
13 WA discussed what might be done with the page. *Id.*

14 On December 21, 2019, Chapter Head Garvais/Siri Sanguine added Defendants David
15 Johnson, Leah Fishbaugh, and Mickey Meehan (known at the time as Lenore Calavera) as editors
16 of the South Sound Satanists page. *Id.* ¶ 8. The plan was to turn the largely abandoned page into
17 a “memes page,” focusing on short-form humor and provocative images, rather than use the page
18 as a community. *Id.* The page was intended to include funny “memes” from places like Twitter
19 and Tumblr. *Id.* It was supposed to be tonally comedic, light, and ironic. *Id.* On January 1, 2020,
20 Garvais/Siri Sanguine changed the roles of Defendants Johnson and Meehan/Lenore Calavera to
21 “admin” status, which gave them complete ability to manage the Memes Page, including deciding
22 who else to add or remove as admins. *Id.* ¶ 9. Defendants Johnson and Meehan have been admins
23 of the page ever since. *Id.* ¶ 16.

24 Around that same time, Garvais/Siri Sanguine accidentally renamed the South Sound Page
25 to “TST WA Allies.” This change was a mistake. *Id.* ¶ 10. The change was supposed to take place
26 on a related Facebook *group* called the South Sound Satanists Group, which facilitated semi-

1 private communications among people who were interested in TST but did not want to be
2 members. *Id.* Facebook *pages* are different than Facebook *groups*. A Facebook *page* can be
3 accessed by anyone in the public with a Facebook profile. *Id.* A Facebook *group* is used more for
4 building communities among those who share a common interest, such as employees or church
5 members. Unlike pages, groups can be set to private or semi-private.⁴ *Id.* The plan at the time was
6 for the South Sound Satanists Facebook *Group*, which facilitated semi-private conversations, to
7 be turned into a place for people interested in supporting the local chapter’s work without
8 becoming members themselves. *Id.* The Facebook *group* that had been associated with the South
9 Sound Satanists for their own organizing and socializing was scrubbed of identifying information
10 (such as addresses for meeting up to work on crafts), and was opened to applications from non-
11 chapter members. *Id.* ¶ 11. This Facebook group was re-named “The Satanic Temple - Washington
12 State (Allies)” on January 1, 2020. *Id.* However, on the same date, Garvais/Siri Sanguine
13 mistakenly renamed the South Sound Satanists *page* (the Memes Page) to “TST WA Allies.” *Id.*
14 Because Facebook does not allow a name to be changed again too soon after a prior name change,
15 the mistake could not immediately be fixed. *Id.* However, at this same time, the page’s
16 username/url was changed to be “facebook.com/queersatanicmemes” and the future intent was to
17 change the name of the Memes Page to something relating to the url, aligning the page with its
18 new “meme” content. *Id.*

19 On March 12, 2020, Chapter Head Leah Garvais/Siri Sanguine sent an email to the TST-
20 WA membership that stated that TST-WA had been investigating a complaint made by a member
21 (not the Defendants). Declaration of Nathan Sullivan in Opposition to Motion for Preliminary
22 Injunction (“Sullivan Decl.”) ¶ 7. To the Defendants’ shock, the email accused them and others of
23 having been involved in an alleged coalition ostensibly intended to attack and undermine TST-
24 WA’s leadership. *Id.* The email announced Leah Garvais/Siri Sanguine’s decision to address the

25 _____
26 ⁴ These differences are explained by Facebook in a short Facebook Help Center post called
“Differences between Profiles, Pages and Groups on Facebook,” available at
<https://www.facebook.com/help/337881706729661>.

1 issue by dissolving the advisory committee (upon which the Defendants served) and replace it with
 2 a smaller, handpicked group. *Id.* In another email, Leah Garvais/Siri Sanguine reiterated her plan
 3 to dissolve the existing advisory committee and create a smaller Strategy Council. *Id.* ¶ 8.

4 On March 14, 2020 at 5:31pm, Garvais/Siri berated Defendant Mickey Meehan/Lenore
 5 Calavera for his social media work (that he had been providing on a voluntary and complimentary
 6 basis) and was critical of the content he was posting on the Memes Page. *Id.* ¶ 9; Johnson Decl.
 7 ¶ 13 & Ex. 1. Meehan/Lenore Calavera then removed Garvais/Siri Sanguine and Case/Tarkus
 8 Claypool as admins from the Memes Page. Johnson Decl. ¶ 13 & Ex. 2. Afterward Meehan
 9 changed the name of the Memes Page to “Evergreen Memes for Queer Satanic Fiends.” *Id.* ¶ 13
 10 & Ex. 3. In an email at 7:48 pm that same day, Garvais/Siri Sanguine accused Meehan/Lenore
 11 Calavera of having “stolen” the former South Sound Facebook page. *Id.* ¶ 13 & Ex. 4. At 7:59 pm,
 12 Meehan/Lenore Calavera posted at the top of the Memes Page “This page is no longer affiliated
 13 with The Satanic Temple” and explained the reasons why it was no longer so affiliated. *Id.* ¶ 13 &
 14 Ex. 3.

15 That night, at 9:09 pm, after Meehan/Lenore Calavera had changed the Memes Page’s
 16 name and posted the statement that the page was no longer affiliated with TST, TST-WA’s Media
 17 Liaison, Case/Tarkus Claypool, sent Meehan/Lenore Calavera an email with the subject line
 18 “Evergreen Memes for Queer Satanic Fiends” in which Case/Tarkus Claypool told Meehan/Lenore
 19 Calavera that TST had no interest in claiming the page and that Defendants could have and use the
 20 page “free and clear:”

21 Hi Lenore,

22 I saw that you made some changes to the TST WA State Allies FB group. **I just**
 23 **wanted to let you know that it’s yours free and clear and we’ve no desire to**
 24 **claim it.** You and ADJ built it and have done a great job doing so. I’m confident
 you’ll both continue doing awesome work.

25 Sorry the way things panned out, and I do mean all of it. I wish you and your family
 26 well, and respect your need to fight the fight your way.

Rock on,

1
2 Tarkus Claypool
3 Media Liaison, The Satanic Temple of Washington
(he/him)

4 Sullivan Decl. ¶ 10 & Ex. 1; Johnson Decl. ¶ 14 & Ex. 5 (emphasis added).

5 The next day, in a March 15, 2020 online town hall meeting via Zoom, Media Liaison
6 Case/Tarkus Claypool again publicly reiterated in front of TST-WA members, including TST-
7 Chapter Head, Garvais/Sanguine, that TST-WA had no interest in claiming the Memes Page:

8 I do want to say that **we're not going to, you know, ask Lenore to give the page**
9 **back in any way.** I wish them well, and I hope that they continue growing that and
10 make it a great success. Because they're going to fight their fight, their way. And
11 so, let them do what they want to, and I wish them well, because both Lenore and
12 ADJ [Johnson] did a wonderful job in the roles that they had. It just wasn't within
the TST guidelines that we are beholden to. So I want to give them due credit, and
just you know, wish them well with what they're going to plan to do with it in the
future.

13 Sullivan Decl. ¶ 14; Johnson Decl. ¶ 15; Declaration of Jeremy Roller in Opposition to Motion for
14 Preliminary Injunction (“Roller Decl.”) Ex. 1 at time stamp 1:20:35.

15 Since Case/Tarkus Claypool's clear statements that TST-WA had no interest in the Memes
16 Page and that Defendants could use it “free and clear,” no one from TST asked Defendants to give
17 TST control of the Memes Page. Sullivan Decl. ¶ 16; Johnson Decl. ¶ 16. Similarly, Defendants
18 are not aware of TST ever asking Facebook to remove Defendants as admins from the Memes
19 Page. Johnson Decl. ¶ 16.

20 In June of 2022, after Defendants filed their Motion to Dismiss the SAC, TST's attorney
21 suddenly threatened to file a TRO application seeking control of the Memes Page, requesting for
22 the first time that Defendants give TST administrative control of the Memes Page. *Id.* ¶ 16; Roller
23 Decl. Ex. 2. In response to TST's threatened TRO, Defendants' attorney shared with TST's
24 attorney Case/Claypool's March 14, 2020 email relinquishing any interest in the Memes Page and
25 giving Defendants permission to use the Page “free and clear.” Roller Decl. ¶ 3 & Ex. 2. TST did
26 not file the TRO application. However, despite being aware of clear evidence defeating their claim,

1 TST has now inexplicably⁵ filed its current Motion, in which it neglects to inform the Court of the
2 key evidence that is fatal to its claim – *i.e.*, that TST expressly gave Defendants permission to use
3 the Meme Page “free and clear.”

4 **C. TST’s Attorney Has Publicly Stated His Intent to Use This Litigation to Harass
5 Defendants.**

6 The reason that TST has brought its Motion despite the lack of any merit is to harass
7 Defendants. On May 26, 2022, TST’s lead counsel, Matt Kezhaya, publicly stated his improper
8 motivation for pursuing this litigation against Defendants—referring to Defendants as “morons”
9 and “pathetic” and stating his hope that they incur an unsustainable amount of attorneys’ fees in
10 defending against this matter. Johnson Decl. ¶ 18 & Ex. 6. (“I hope he [Defendants’ attorney]
11 squeezes every last penny from you living corpses, and anyone that gives you the time of day.”).
12 More recently, on November 16, 2022, TST’s counsel again expressed improper motives against
13 Defendants through a public Tweet, suggesting that this case is driven from a sense of vengeance
14 rather than legitimate legal grounds:

15 Are these fuckwits still talking about me? Grow up and file an answer so I can get
16 at your financial records. I’m coming for you. Tell the judge on me again, I double
17 dare you.

18 Johnson Decl. ¶ 19 & Ex. 8. Just days after posting this public taunt, TST followed through on the
19 threat and filed the Motion the night before Thanksgiving, Wednesday, November 23, 2022.

20 **III. ARGUMENT**

21 **A. TST’s Pseudonymous Declaration Should Not Be Considered.**

22 Defendants object to TST’s use of a pseudonymous declaration. In support of its Motion,
23 TST submits only one declaration from an unidentified person in Canada using the pseudonym
24 “Rachel Chambliss.” Chambliss Declaration ¶¶ 1-2. This “person” states that she/he/they is using

25 ⁵ At the time TST filed this lawsuit, the Memes Page had only about 500 followers. Johnson Decl.
26 ¶ 16. Since TST told Defendants it had no interest in the Memes Page and that they could use it
“free and clear”, the Memes Page has grown to approximately 24,000 followers. *Id.* In addition to
harassing Defendants, it is likely that this growth is the reason TST has suddenly reversed course
regarding the Memes Page and is now bringing this Motion in yet another attempt to silence the
Defendants after its defamation claim failed.

1 the pseudonym due to a general reluctance to be publicly affiliated with TST. *Id.* ¶ 2 (“I am
2 submitting this affidavit under a pseudonym to protect myself from harassment due to my
3 employment and membership with The Satanic Temple (‘TST’).”). Only in “rare circumstances”
4 may witnesses testify anonymously. *Doe v. Los Angeles Unified Sch. Dist.*, No.
5 216CV00305CASJEMX, 2017 WL 797152, at *9 (C.D. Cal. Feb. 27, 2017) (“Absent
6 extraordinary circumstances, witnesses do not testify anonymously under our system of laws.”)
7 (quoting *Diamond Pleasanton Enter., Inc. v. City of Pleasanton*, No. 12-CV-00254-WHO, 2015
8 WL 74946, at *1 (N.D. Cal. Jan. 5, 2015)). Such rare circumstances are not present here. TST has
9 not sought a protective order to keep its witness’s name under seal, nor has TST filed any document
10 identifying the signer of the supporting declaration. 28 U.S.C. § 1746 requires that unsworn
11 declarations be signed by the declarant under penalty of perjury. Without any record whatsoever
12 of a witness’s identity or their signature, a declarant cannot be held to their statements under
13 “penalty of perjury.” *Id.* Because TST has not obtained permission or otherwise shown cause for
14 filing a pseudonymous declaration, the Court should decline to consider the defective declaration
15 offered in support of TST’s Motion.

16 **B. Injunction Standards**

17 **1. Preliminary Injunction Standard**

18 “The basic function of a preliminary injunction is to preserve the status quo pending a
19 determination of the action on the merits.” *Muckleshoot Indian Tribe v. Hall*, 698 F. Supp. 1504,
20 1508–09 (W.D. Wash. 1988). A preliminary injunction is an “extraordinary remedy that may only
21 be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Nat. Res.*
22 *Def. Council, Inc.*, 555 U.S. 7, 22, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008). “A party seeking a
23 preliminary injunction must meet one of two variants of the same standard.” *Zest Anchors, LLC v.*
24 *Geryon Ventures, LLC*, No. 22-CV-230 TWR (NLS), 2022 WL 2811646, at *7 (S.D. Cal. July 18,
25 2022) (quoting *Ramos v. Wolf*, 975 F.3d 872, 887 (9th Cir. 2020)). Under the original standard,
26 plaintiffs seeking a preliminary injunction must establish that: (1) they are likely to succeed on the

1 merits; (2) they are likely to suffer irreparable harm in the absence of preliminary relief; (3) the
2 balance of equities tips in their favor; and (4) an injunction is in the public interest.
3 *Id.* (citing *Winter*, 555 U.S. at 20). “The Ninth Circuit employs an alternative ‘serious questions’
4 standard, also known as the ‘sliding scale’ variant of the *Winter* standard.” *Id.* (citing *All. for Wild*
5 *Rockies v. Cottrell*, 632 F.3d 1127, 1134 (9th Cir. 2011)). Under the alternative standard, the court
6 weighs the preliminary injunction factors on a sliding scale, such that where there are only serious
7 questions going to the merits—that is, less than a likelihood of success on the merits—a
8 preliminary injunction may still issue so long as the balance of hardships tips sharply in the
9 plaintiff’s favor and the other two factors are satisfied. *Id.* at 887–88. In other words, a preliminary
10 injunction may be granted where the moving party demonstrates either (1) a combination of
11 probable success on the merits *and* the possibility of irreparable injury or (2) the existence of
12 serious questions going to the merits *and* that the balance of hardships tips sharply in its
13 favor. *Grocery Outlet Inc. v. Albertson’s Inc.*, 497 F.3d 949, 951 (9th Cir. 2007).

14 2. Mandatory Injunction Standard

15 A mandatory injunction is one that goes beyond simply maintaining the status quo and
16 orders a party to take action pending the determination of the case on its merits. *Doe v. Snyder*, 28
17 F.4th 103, 111 (9th Cir. 2022). The standard for issuing a mandatory preliminary injunction is
18 high. “In general, mandatory injunctions ‘are not granted unless extreme or very serious damage
19 will result and are not issued in doubtful cases or where the injury complained of is capable of
20 compensation in damages.’” *Id.* (quoting *Marlyn Nutraceuticals v. Mucos Pharma GmbH & Co.*,
21 571 F.3d 873, 879 (2009)). Because mandatory injunctions go beyond maintaining the status quo,
22 they are particularly disfavored unless the law clearly favors the moving party. *Garcia v. Google,*
23 *Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).

1 **C. TST Falls far Short of Meeting the Requirements for a Preliminary Injunction for**
2 **the Memes Page**

3 **1. TST is Seeking a Mandatory Preliminary Injunction**

4 As set forth above, a preliminary injunction seeks to protect the status quo between the
5 parties, while a mandatory injunction seeks an order requiring a party to take action pending a
6 determination on the merits. The relief that TST seeks here is mandatory. The status quo vis-à-vis
7 the Memes Page is that Defendants have been admins for the Memes Page since January of 2020,
8 months before this litigation began. Johnson Decl. ¶ 16. Defendants have remained admins for the
9 page since then – throughout the last two and a half years of this litigation. *Id.* Preserving the status
10 quo means allowing Defendants to *remain in control* of the Memes Page while this case is litigated.
11 What TST seeks is the opposite. Through its Motion, TST asks the Court for a mandatory
12 injunction requiring Defendants to give control of the Memes Page to TST. Because TST is seeking
13 a mandatory injunction, the Court must apply a higher level of scrutiny to this disfavored remedy.
14 As discussed below, TST falls far short of meeting the requirements for showing that this
15 extraordinary and disfavored remedy is appropriate. Even if the requested injunctive relief is not
16 deemed mandatory, TST still fails to come close to meeting the requirements for a preliminary
17 injunction.

18 **2. TST Cannot Show It is Likely to Succeed on the Merits**

19 TST's Motion is based on its state common law claims for conversion and trespass to
20 chattels, stemming from the false allegations that Defendants have intentionally and wrongfully
21 dispossessed TST of its property. Motion at 5. Specifically, TST alleges in its Motion that
22 Defendants wrongfully dispossessed TST of the Memes Page. *Id.* at 5-7. TST has not, and cannot,
23 establish that it will succeed on this claim. To the contrary, the evidence, of which TST is fully
24 aware, establishes the opposite.

25 To succeed on a claim for conversion, a plaintiff must establish: (1) willful interference
26 with chattel belonging to the plaintiff, (2) by either taking or unlawful retention, (3) thereby
depriving the owner of possession. *See Judkins v. Sadler-Mac Neil*, 61 Wn.2d 1, 3, 376 P.2d 837

1 (1962). Similarly, trespass to chattels requires showing the intentional dispossession of chattels.
2 Restatement (Second) of Torts § 217. At the core of both these related claims is the requirement
3 for proving the wrongful use or interference with the property. If a defendant has permission or
4 other lawful reason for retaining or using property, the claim fails. *See, e.g., Revolutionar, Inc. v.*
5 *Gravity Jack, Inc.*, 13 Wn. App. 2d 1044 (2020) (unpublished; cited as persuasive authority)
6 (because defendants had permission to use the software code and platform at issue the conversion
7 claim failed). Stated yet another way, “[i]n order to constitute conversion, nonconsent to the
8 possession and disposition of the property by the defendant is indispensable.” 90 C.J.S. Trover and
9 Conversion § 6; *see also* Restatement (Second) of Torts § 272 (“One who is entitled to the
10 immediate possession of a chattel is not liable to another for dispossessing him of it.”).

11 In this case, TST cannot show that Defendants have wrongfully used or interfered with
12 property owned by TST. First, TST provides **no evidence** that it is the owner of or has any rights
13 to the Memes Page. The one pseudonymous declaration submitted in support of the Motion (which
14 should not be considered) offers no evidence that TST has any legal right to the Memes Page. The
15 pseudonymous declarant offers one conclusory assertion that the Memes Page is “TST’s Facebook
16 page,” but offers no factual support for that assumption. Tellingly, TST provides no explanation
17 as to why, if TST felt it had the legal right to control the Memes Page, it never sought the page
18 through Facebook over two and a half years ago, when Defendant Meehan changed its name and
19 posted that the page was not affiliated with TST. TST had an avenue available to it through
20 Facebook (the owner of the Page) to remove Defendants as the administrators if TST felt it was
21 the rightful party to control it. But TST does not allege that it even attempted that step. Instead,
22 TST simply points to one offhand statement that Defendant Sullivan made in a Facebook post in
23 which he says that they “stole” the page from TST. However, as Defendant Sullivan explains, the
24 comment was meant to be glib because at that point TST had already relinquished any interest in
25 the Memes Page and had told Defendants they could use it “free and clear.” Sullivan Decl. ¶ 15.

1 In short, there is no credible evidence (or any evidence at all), that TST is the rightful party to
2 control the Memes Page.

3 On the other hand, through the contemporaneously filed declarations, Defendants have
4 provided proof that they do have the right to control the Memes Page. TST expressly
5 acknowledged that right when its Media Liaison, Paul Case/Tarkus Claypool, told Defendant
6 Meehan he could use the page “free and clear” and when Case/Claypool reiterated TST’s
7 relinquishment of any interest in the town hall meeting. Johnson Decl. ¶ 14 & Ex. 5; Sullivan Decl.
8 ¶ 10 & Ex. 1. TST has acted consistently with these statements by never asking Facebook to
9 remove Defendants as administrators from the Memes Page as TST did for another Facebook page
10 that was at issue in this suit.⁶ Nor did TST ever ask Defendants to give it control of the Memes
11 Page until well over two years after bringing this lawsuit.

12 When made aware of the evidence that TST relinquished any interest in the Memes Page,
13 TST’s counsel suggested that TST’s Media Liaison lacked the authority to speak on TST-WA’s
14 behalf. Roller Decl. Ex. 2. However, TST-WA itself has represented to its members that TST-
15 WA’s Chapter Head and Media Liaison have authority to run TST-WA. Sullivan Decl. ¶ 2;
16 Johnson Decl. ¶ 3. Indeed, even in its SAC, TST refers to its Media Liaison, Paul Case/Tarkus
17 Claypool, as a TST representative.⁷ At the very most, TST’s argument could potentially create an
18 issue of fact (although a very weak one). But such an issue of fact would not help TST establish
19 its clear legal right to the Memes Page or Defendants’ wrongful use of the Memes Page as required
20 to support a mandatory injunction, or even a preliminary injunction.

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22
23 ⁶ See SAC ¶ 4, in which TST describes how it worked through Facebook to obtain the
administrative control of TST’s Washington Chapter Facebook Page.

24 ⁷ The individual who sent Defendant Mickey Meehan (a/k/a “Lenore Calavera”) the March 15,
25 2020 email was known as “Tarkus Claypool.” Sullivan Decl. ¶¶ 3, 10. Upon information and
26 belief, the individual’s name for government documents is Paul M. Case. *Id.* ¶ 3. In its SAC, TST
refers to Tarkus Claypool as its Media Liaison and states that it was Tarkus Claypool who sought
the return of the Washington Chapter Facebook Page on TST’s behalf. SAC ¶ 53. Thus, TST itself
has held out Tarkus Claypool as its agent.

1 **3. TST Fails to Show It Will Suffer Irreparable Harm.**

2 TST’s Motion should also be denied because it has not made a showing of irreparable harm
3 if the preliminary injunction is not granted. First, TST’s delay of over **two and a half years** weighs
4 heavily against finding the type of irreparable harm required for a preliminary injunction.
5 “A preliminary injunction is sought upon the theory that there is an urgent need for speedy action
6 to protect the plaintiff’s rights. By sleeping on its rights a plaintiff demonstrates the lack of need
7 for speedy action” *Lydo Enterprises, Inc. v. City of Las Vegas*, 745 F.2d 1211, 1213–14 (9th
8 Cir. 1984) (quoting *Gillette Co. v. Ed Pinaud, Inc.*, 178 F. Supp. 618, 622 (S.D.N.Y. 1959)). Thus,
9 while not always dispositive by itself, a long delay in seeking a preliminary injunction (with the
10 delay usually measured in weeks and months) weighs very heavily against the plaintiff. *See*,
11 *e.g.*, *Valeo Intellectual Prop., Inc. v. Data Depth Corp.*, 368 F. Supp. 2d 1121, 1128 (W.D. Wash.
12 2005) (“A three-month delay in seeking injunctive relief is inconsistent with [the plaintiff’s]
13 insistence that it faces irreparable harm.”); *Barton & Assocs. Inc. v. Trainor*, No. CV-20-01560-
14 PHX-SPL, 2020 WL 6081496, at *6 (D. Ariz. Oct. 15, 2020) (denying preliminary injunction
15 where plaintiff waited three weeks after filing the complaint before seeking preliminary
16 injunction); *Tough Traveler, Ltd. v. Outbound Products*, 60 F.3d 964, 969 (2d Cir. 1995)
17 (reversing grant of preliminary injunction where plaintiff delayed four months from filing suit
18 before moving for preliminary injunction); *Citibank N.A. v. Citytrust*, 756 F.2d 273 (2d Cir.1985)
19 (reversing grant of preliminary injunction where plaintiff delayed ten weeks after receiving actual
20 notice of infringement before filing suit and several weeks further before moving for preliminary
21 injunction). Here the delay is extreme – over two and a half years. Given the long delay, it is clear
22 that TST is not facing irreparable harm if the injunction is not issued.

23 Second, even apart from the long delay, TST has made no showing of irreparable harm. To
24 establish irreparable harm, TST must do more than merely allege it, it must “*demonstrate*
25 immediate threatened injury as a prerequisite to preliminary injunctive relief.” *Valeo*, 368 F. Supp.
26 2d at 1128 (quoting *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988)

1 (emphasis in original)). Even the case upon which TST relies clearly makes this point. In *Herb*
 2 *Reed Enterprises, LLC v. Fla. Ent. Mgmt., Inc.*, 736 F.3d 1239, 1250 (9th Cir. 2013), cited in
 3 TST’s Motion at 7, the court reversed a preliminary injunction because the evidence upon which
 4 the injunction was based was conclusory and unsupported. *Id.* (“Marshak asserts that the district
 5 court abused its discretion by relying on ‘unsupported and conclusory statements regarding harm
 6 [HRE] *might* suffer.’ We agree.”). The court admonished the district court that conclusory
 7 allegations of harm to business reputation or goodwill are not enough:

8 Evidence of loss of control over business reputation and damage to goodwill could
 9 constitute irreparable harm. . . . Here, however, the court’s pronouncements are
 10 grounded in platitudes rather than evidence, and relate neither to whether
 11 “irreparable injury is *likely* in the absence of an injunction,” . . . nor to whether legal
 12 remedies, such as money damages, are inadequate in this case. It may be that HRE
 13 could establish the likelihood of irreparable harm. But missing from this record is
 14 any such evidence.

15

16 *Those seeking injunctive relief must proffer evidence sufficient to establish a*
 17 *likelihood of irreparable harm.*

18 *Id.* at 1250-51 (internal citations omitted) (emphasis in last sentence added).

19 In this case, as in *Herb Reed Enterprises*, TST offers nothing more than conclusory
 20 allegations of harm to goodwill and reputation. Even if the supporting pseudonymous declaration
 21 is considered (which it should not be), the unknown declarant provides only vague, conclusory,
 22 unsupported statements, with no actual evidence of any harm. While the pseudonymous declarant
 23 states in a conclusory fashion that he/she/they has firsthand knowledge of the harm TST has
 24 suffered (¶ 6), the declarant stops there and neglects to provide any details at all of evidence of
 25 such harm – *e.g.*, no statistics or proof about lost membership or a decline in donations or profits.
 26 Nothing. Similarly, in the Motion itself, TST simply makes vague, conclusory allegations that TST
 has been harmed without citing to any supporting evidence. Motion at 7 (stating in a conclusory
 manner that TST has lost current and potential members and public goodwill without providing
 any evidence). Lacking any evidence of harm, TST clearly cannot meet its burden of establishing
 irreparable harm.

1 Third, TST’s Motion shows that its true purpose is not to address alleged damages for
2 alleged lost property, but rather to use its state law conversion and trespass claims to try yet again
3 to relitigate its dismissed defamation claim and to try to prevent its former members from making
4 critical statements about TST’s tenets and practices. Not only is the Motion devoid of any evidence
5 of actual harm stemming from the allegedly converted Memes Page, but its conclusory allegations
6 focus on the fact that Defendants make critical statements about TST on many different social
7 media platforms. Motion at 6 (complaining that Defendants post critical content on other social
8 media platforms); Pseudonymous Decl. ¶ 5 (“Comments by and about Defendants are prolific on
9 those areas of social media where TST is discussed. One cannot view content about TST on social
10 media sites without encountering posts by Queer Satanic, or posts that share their talking points.
11 Those talking points are then shared by other social media users.”); ¶ 12 (“Defendants, operating
12 under the name QueerSatanic, insert themselves into conversations about TST on Reddit and
13 disparage TST.”). These are not complaints about damages caused by the loss of property, but are
14 simply complaints that Defendants are critical of TST. TST’s Motion should be recognized for
15 what it is – a backdoor and improper attempt to revive its dismissed defamation claim – and should
16 be denied on this basis as well.

17 **4. The Balance of Equities Favors Defendants, not TST**

18 In addition to failing to show likelihood of success or irreparable harm, TST also fails to
19 show that equities favor it. TST argues that this element is met because Defendants’ conduct is
20 “illegal.” Yet, as discussed above, TST falls far short of establishing it will succeed on the merits
21 of its conversion/trespass to chattels claims and thus cannot show that Defendants engaged in
22 “illegal” conduct. Further, where the plaintiff falls well short of showing that the Defendants are
23 wrongfully using a Facebook page, public policy will not be served by requiring Defendants to
24 give up control before liability has been established. This is especially so when the plaintiff has
25 waited over two and a half years to seek an injunction – thus demonstrating the lack of any
26 immediate harm while the dispute is resolved.

1 While TST has failed to show any equitable grounds favoring a mandatory injunction,
 2 Defendants have clear equitable grounds for maintaining administration of the page. TST expressly
 3 represented to Defendants that they could use the Memes Page “free and clear.” TST then acted
 4 consistently with that statement by not seeking the return of the Memes Page for over two years.
 5 Defendants relied on those statements to freely use the Memes Page. If TST were allowed to now
 6 contradict its own express statements and actions, Defendants would be inequitably harmed, not
 7 TST. Principles of equity and estoppel demand that TST not be permitted to do so.

8 **5. TST’s True Motive for Bringing this Motion is to Harass Defendants**

9 Finally, as part of the equitable considerations in deciding whether to issue a preliminary
 10 injunction, the Court should take heed of evidence that shows that TST’s true motive for bringing
 11 its Motion is not to address any imminent harm, but rather to harass Defendants.

12 On May 26, 2022, TST’s counsel publicly expressed the motivation for pursuing this
 13 litigation against Defendants—referring to Defendants as “**morons**,” “**pathetic**,” and “**living**
 14 **corpses**” and stating his hope that they incur an unsustainable amount of attorneys’ fees defending
 15 against this matter. Johnson Decl. ¶ 18 & Ex. 6. (“I hope he [Defendants’ attorney] squeezes every
 16 last penny from you living corpses, and anyone that gives you the time of day.”) (emphasis added).
 17 More recently, TST’s counsel again expressed improper motives against Defendants through a
 18 public Tweet, suggesting that this case is driven more from a sense of vengeance than legitimate
 19 legal grounds:

20 **Are these fuckwits still talking about me?** Grow up and file an answer so I can
 21 get at your financial records. **I’m coming for you.** Tell the judge on me again, I
 double dare you.

22 Johnson Decl. ¶ 20 & Ex. 8 (emphases added). Just a week after posting this public taunt, TST’s
 23 counsel followed through on his threat to “com[e] for you” and filed the Motion the night before
 24 Thanksgiving, Wednesday, November 23, 2022. In addition to obviously being timed to impact
 25 Defendants’ holiday, the substance of the fatally defective, slapdash Motion shows that it is not
 26 intended as a legitimate attempt to seek a preliminary injunction. The Motion includes only one,

1 vague declaration from a pseudonymous person that does not include basic, necessary facts to
2 succeed on a request for a preliminary injunction, such as evidence that TST has any legal right to
3 the Memes Page. The Motion also neglects to inform the Court of the most critical evidence that
4 is fatal to the Motion – that TST represented to Defendants over two and a half years ago that they
5 could use the Memes Page “free and clear” and that TST had no interest in it. The Motion does
6 not even attempt to address any harm from the alleged loss of converted property, but rather is a
7 blatant attempt to relitigate the dismissed defamation claim in an attempt to silence Defendants’
8 religious views, which are critical of TST’s tenets and practices. The Motion is really nothing more
9 than a hollow shell, devoid of any valid grounds. But TST knows that even meritless motions
10 require a response. TST also knows that Defendants are individuals with limited financial means
11 for whom this lawsuit presents a true financial hardship. TST should not be allowed to continue
12 leveraging its disproportionate power to harass Defendants to try to intimidate them into refraining
13 from expressing their beliefs regarding TST.

14 Given this demonstrated bad faith and improper purpose, this Court would be justified in
15 exercising its inherent power to sanction this contemptible conduct. *See Fisk v. Gomez*, 239 F.3d
16 989, 994 (9th Cir. 2001) (discussing a court’s inherent power to sanction “for a variety of types of
17 willful actions, including recklessness when combined with an additional factor such as
18 frivolousness, harassment, or an improper purpose”).

19 **D. TST Fails to Allege any Facts or Provide any Argument Regarding “Documents”**

20 In the introduction to the Motion (Motion at 2), TST makes one vague reference to
21 “business documents.” However, nowhere else in either the Motion or the pseudonymous
22 supporting declaration does TST provide any facts regarding any such documents. Nor does TST
23 mention the “business documents” in the argument section or provide any grounds at all for
24 obtaining a preliminary injunction as to the unidentified documents. Lacking any factual or legal
25
26

1 support whatsoever for obtaining a preliminary injunction as to undefined “business documents,”
 2 TST’s Motion as to the documents must fail.⁸

3 **E. TST Should Be Required to Post a Bond**

4 Although TST must not prevail on its request for a preliminary injunction given the
 5 complete lack of factual or legal grounds, in the unlikely event an injunction is issued TST should
 6 be required to post a bond pursuant to Rule 65(c). Rule 65(c) requires the moving party to post a
 7 security bond to protect the adverse party from damages caused by a wrongfully granted
 8 injunction and to deter frivolous claims. *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d
 9 797, 804 (3d Cir. 1989). Although attorneys’ fees in setting aside a wrongfully issued injunction
 10 are not normally part of the damages included by the bond, the Court has inherent power to
 11 determine if attorneys’ fees may be proper in light of bad faith conduct. *Chambers v. NASCO, Inc.*,
 12 501 U.S. 32, 45–46, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991) (observing that court has inherent
 13 power to assess attorney’s fees “when a party has acted in bad faith, vexatiously, wantonly or for
 14 oppressive reasons”); *Adams v. Gissell*, No. CV 20-11366-PBS, 2022 WL 2387881, at *2 (D.
 15 Mass. Apr. 19, 2022), *report and recommendation adopted*, No. CV 20-11366-PBS, 2022 WL
 16 16702407 (D. Mass. Aug. 24, 2022) (“It is beyond serious dispute that a district court may use
 17 its inherent powers to assess attorneys’ fees against a party that has ‘acted in bad faith,
 18 vexatiously, wantonly, or for oppressive reasons.’”) (quoting *Pan Am Grain Mfg. Co. v. P.R. Ports*
 19 *Auth.*, 295 F.3d 108, 117 (1st Cir. 2002)). Given the repeated public statements made by TST’s
 20 counsel indicating that this litigation and this Motion are brought in bad faith for the purpose of
 21 harassing Defendants and trying to “squeeze every last penny from you [Defendants] living
 22 corpses,” it would be appropriate for the Court to exercise its inherent powers to require a
 23 substantial bond to cover Defendants’ attorneys’ fees and costs in seeking to undo a wrongfully
 24

25 ⁸ Because TST has not included any facts at all regarding documents, Defendants are unable to
 26 even guess what the alleged documents are. TST should not be allowed to improperly blindsides
 Defendants by including new facts and allegations in a reply brief, to which Defendants will not
 be able to respond.

1 issued injunction.⁹

2 **IV. CONCLUSION**

3 The Satanic Temple cannot meet any of the elements of a preliminary injunction. The
4 purpose of The Satanic Temple's Motion is to harass and attempt to silence Defendants, driving
5 up their legal fees for purely vindictive reasons. The Satanic Temple's Motion must be denied.

6 DATED: December 12, 2022.

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17 ⁹ The Court may take judicial notice of the fact that TST, through the same counsel, has been
18 sanctioned in other federal district courts for bad faith litigation tactics, establishing a pattern and
19 practice of using such tactics. *See, e.g., Satanic Temple, Inc. v. City of Belle Plaine, MN*, No. 21-
20 CV-0336 (WMW/JFD), 2022 WL 1639514, at *2 (D. Minn. May 24, 2022) (upholding sanctions
21 against TST for bad faith litigation tactics in filing a second complaint after the court had clearly
22 dismissed the claims in the first complaint); *Satanic Temple, Inc. v. City of Bos., MA*, No. 21-CV-
23 10102-AK, 2022 WL 1028925, at *6 (D. Mass. Apr. 6, 2022) (sanctioning TST for abusive
24 subpoena practices). In the *City of Boston* case, the court rebuked TST's attorney for his
25 unabashedly improper litigation philosophy:

26 Independent of a potential deponent's profession or media exposure, it is in
exceptionally bad faith to intentionally notice a deposition for a date and time when
a party knows the deponent will be unavailable or greatly inconvenienced. In his
explanatory letter to the Court, Plaintiff's counsel states that he, as an attorney, has
"a sworn duty to do anything short of breaking the law to see to it that my client's
goals are recognized." [Dkt. 38 at 2]. Yet this is not the case. Rules such as the
Massachusetts Rules of Professional Conduct (and other states' equivalents),
various ethics rules and guidelines, and the Rules of Civil Procedure govern
attorney and litigant conduct in all sorts of ways that reach beyond conduct that is
simply illegal—and they do so precisely to prevent the type of abuse of process
Plaintiff's counsel has employed here.

Id. at *6; *see also* Johnson Decl. ¶ 19 n.5 & Ex. 9.

CERTIFICATE OF SERVICE

I, Janet Fischer, certify that on December 12, 2022, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, thereby sending a notification of such filing to the following parties:

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Dated this 12th day of December, 2022, at Seattle, Washington.

/s/ Janet Fischer

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