

The Honorable Barbara J. Rothstein

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PARLER LLC,

Plaintiff,

v.

AMAZON WEB SERVICES, INC.,

Defendant.

No. 2:21-cv-00031-BJR

DEFENDANT AMAZON WEB
SERVICES, INC.'S OPPOSITION
TO PARLER LLC'S MOTION
FOR TEMPORARY
RESTRAINING ORDER

1 **I. INTRODUCTION**

2 This case is not about suppressing speech or stifling viewpoints. It is not about a
 3 conspiracy to restrain trade. Instead, this case is about Parler’s demonstrated unwillingness and
 4 inability to remove from the servers of Amazon Web Services (“AWS”) content that threatens
 5 the public safety, such as by inciting and planning the rape, torture, and assassination of named
 6 public officials and private citizens. There is no legal basis in AWS’s customer agreements or
 7 otherwise to compel AWS to host content of this nature. AWS notified Parler repeatedly that its
 8 content violated the parties’ agreement, requested removal, and reviewed Parler’s plan to address
 9 the problem, only to determine that Parler was both unwilling and unable to do so. AWS
 10 suspended Parler’s account as a last resort to prevent further access to such content, including
 11 plans for violence to disrupt the impending Presidential transition.

12 Despite Parler’s rhetoric, its lawsuit is no more than a meritless claim for breach of
 13 contract. But the facts are unequivocal: If there is any breach, it is Parler’s demonstrated failure
 14 and inability to identify and remove such content. AWS was well within its rights to suspend
 15 Parler immediately for those failures. Parler also cannot hold AWS liable in tort for enforcing
 16 the agreement’s express terms. And there is no antitrust claim where, as here, Parler cannot
 17 plausibly plead an agreement to cause it harm and the complained-of conduct is undeniably
 18 compatible with a legitimate purpose.

19 Compelling AWS to host content that plans, encourages, and incites violence would be
 20 unprecedented. Parler has no likelihood of prevailing on the merits, and the balance of equities
 21 and public interest strongly tip against an injunction. The motion for a temporary restraining
 22 order should be denied.

23 **II. FACTUAL BACKGROUND**

24 **A. Parler Conducts the “Absolute Minimum” of Content Moderation.¹**

25 Parler operates a social media service that has gained favor as an alternative to Facebook
 26 and Twitter. Doran Decl. Ex. A. Parler prides itself on its hands-off approach to moderating

27 ¹ Declaration of Ambika Doran Ex. B.

1 user content. Parler’s homepage tells users to “[s]peak freely and express yourself openly,
2 without fear of being ‘deplatformed’ for your views.” *Id.* In interviews, Parler’s CEO has stated
3 he “do[es]n’t think it’s [Parler’s] obligation to” monitor the full range of it users’ content, Doran
4 Decl. Ex. O, and promoted the service’s laissez-faire philosophy on content moderation. *See id.*
5 Ex. D (“If you can say it on the street of New York, you can say it on Parler”); *id.* Ex. E at 4:48
6 (“[W]hat we’ve decided to do is, let’s just not do any curation, no fact checking, let people do
7 that on their own”); *id.* at 5:42 (attributing Parler’s projected growth to not moderating
8 content as other social media services do); *id.* Ex. C at 2:02 (stating “we really don’t want to get
9 into the business of kind of determining what is and is not allowed to be discussed”).

10 **B. Parler Enters an Agreement with AWS for Web Hosting Services.**

11 On June 12, 2018, Parler signed up with AWS, which provides hosting and cloud
12 computing services for businesses, nonprofits, and government organizations globally.
13 Declaration of Amazon Executive 2 ¶ 3. Parler accepted the terms of the AWS Customer
14 Agreement. *Id.* Ex. A. The Agreement requires that Parler “ensure that Your Content and your
15 and End Users’ use of Your Content or the Service Offerings will not violate any of the Policies
16 or any applicable law,” and makes clear that Parler is “solely responsible for the development,
17 content, operation, maintenance, and use of” the material on its service. *Id.* § 4.2; *see also id.*
18 § 4.5 (“You will ensure that all End Users comply with your obligations under this Agreement
19”). The Agreement also requires Parler to “immediately suspend access” to content that it
20 learns violates its obligations under the Agreement. *Id.* § 4.5.

21 Parler further agreed to comply with AWS’s Acceptable Use Policy (“AUP”). *Id.* § 14;
22 *see also* Executive 2 Decl. ¶ 3 & Ex. C. The AUP, in turn, makes clear Parler’s agreement not to
23 use AWS to host certain content, including content that “violate[s] the rights of others, or that
24 may be harmful to others.” *Id.*

25 The Agreement further makes clear that AWS may suspend or terminate an account
26 “immediately” upon notice if AWS determines that an end user’s use of the services “poses a
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1 security risk to the Service Offerings or any third party,” or otherwise breaches the Agreement.
2 *Id.* Ex. A § 6.1(a)-(b) (suspension); *id.* § 7.2(b) (termination).

3 **C. Parler Repeatedly Violates the Agreement.**

4 In mid-November 2020, AWS received reports that Parler was hosting content
5 threatening violence, in breach of the agreement. Executive 2 Decl. ¶ 4. On November 17,
6 2020, seeking to better understand Parler’s approach to content moderation, AWS provided
7 Parler two representative examples, asked whether “this type of content ... violate[s] [Parler’s]
8 policies,” and asked for “more detailed information on [Parler’s] policies and processes for
9 handling and mitigating” such content. *Id.* & Ex. D. Two days later, Parler responded that it had
10 referred one of the examples to its “regular contact for investigation.” *Id.* Ex. D.

11 Over the next seven weeks, AWS reported more than 100 additional representative pieces
12 of content advocating violence to Parler’s Chief Policy Officer, including:

- 13 • “Fry’em up. The whole fkn crew. #pelosi #aoc #thesquad #soros #gates
14 #chuckschumer #hrc #obama #adamschiff #blm #antifa we are coming for you and
15 you will know it.”
- 16 • “#JackDorsey ... you will die a bloody death alongside Mark Suckerturd
17 [Zuckerberg].... It has been decided and plans are being put in place. Remember
18 the photographs inside your home while you slept? Yes, that close. You will die a
19 sudden death!”
- 20 • “We are going to fight in a civil War on Jan.20th, Form MILITIAS now and
21 acquire targets.”
- 22 • “On January 20th we need to start systematicly [sic] assassinating [sic] #liberal
23 leaders, liberal activists, #blm leaders and supporters, members of the #nba #nfl
24 #mlb #nhl #mainstreammedia anchors and correspondents and #antifa. I already
25 have a news worthy event planned.”
- 26 • “Shoot the police that protect these shitbag senators right in the head then make the
27 senator grovel a bit before capping they ass.”

- 1 • “After the firing squads are done with the politicians the teachers are next.”
- 2 • “Death to @zuckerberg @realjeffbezos @jackdorsey @pichai.”
- 3 • “White people need to ignite their racial identity and rain down suffering and death
- 4 like a hurricane upon zionists.”
- 5 • “Put a target on these motherless trash [Antifa] they aren’t human taking one out
- 6 would be like stepping on a roach no different.”
- 7 • “We need to act like our forefathers did Kill [Black and Jewish people] all Leave
- 8 no victims or survivors.”
- 9 • “We are coming with our list we know where you live we know who you are and
- 10 we are coming for you and it starts on the 6th civil war... Lol if you will think it’s
- 11 a joke... Enjoy your last few days you have.”
- 12 • “This bitch [Stacey Abrams] will be good target practice for our beginners.”
- 13 • “This cu** [United States Secretary of Transportation Elaine Chao] should be...
- 14 hung for betraying their country.”
- 15 • “Hang this mofo [Georgia Secretary of State Brad Raffensperger] today.”
- 16 • “HANG THAT N***** ASAP”

17 Executive 2 Decl. ¶ 5 & Ex. E at 1-3, 6-7, 13, 17, 28, 32, 49, 53-54; *see also generally id.* Ex. F
18 (more examples).

19 **D. AWS Exercises Its Right to Suspend Parler’s Account.**

20 On January 6, 2021, rioters supporting President Trump’s efforts to overturn President-
21 Elect Biden’s victory stormed the U.S. Capitol. Doran Decl. Exs. F-H. Five people died,
22 including a police officer. *Id.* Ex. I. The FBI and other law-enforcement agencies have since
23 opened at least 25 domestic terrorism cases relating to these incidents. *Id.*

24 Content encouraging violence continued to grow rapidly after the events of January 6,
25 and on January 8, 9, and 10, 2021, AWS reported additional examples of that content. Executive
26 2 Decl. ¶ 6. On January 8 and 9, AWS also spoke with Parler executives about its content
27 moderation policies, processes, and tools, and emphasized that Parler’s current approach failed to

1 address Parler’s duty to promptly identify and remove content that threatened or encouraged
 2 violence. *Id.* In response, Parler outlined additional, reactive steps that would rely almost
 3 exclusively on “volunteers.” *Id.* AWS continued to see problematic content hosted on Parler.
 4 *Id.* ¶ 7. During one of the calls, Parler’s CEO reported that Parler had a backlog of 26,000
 5 reports of content that violated its community standards and remained on its service. *Id.*

6 On January 9, 2021, Apple and Google terminated Parler’s accounts. Doran Decl. Ex. N.
 7 The same day, AWS notified Parler it would suspend its account effective 11:59 p.m. January
 8 10. Executive 2 Decl. ¶ 7 & Dkt. 1-1.² AWS explained it “remain[s] troubled by the repeated
 9 violations of our terms of service,” noting it had “reported 98 examples to Parler of posts that
 10 clearly encourage and incite violence.” *Id.* Dkt. 1-1. AWS also reported the “steady increase in
 11 this violent content,” making “clear that Parler does not have an effective process to comply with
 12 the AWS terms of service.” *Id.* The email also notes Parler “remove[s] some violent content
 13 when contacted by us or others, but not always with urgency,” and Parler’s proposed moderation
 14 plans “will not work in light of the rapidly growing number of violent posts.” *Id.* The letter
 15 confirms that AWS will “ensure that all of your data is preserved for you to migrate to your own
 16 servers, and will work with you as best we can to help your migration.” *Id.*

17 That evening, Parler’s CEO posted that “[w]e should be operational within less then [sic]
 18 12 hours of downtime after Amazon abruptly pulls our access.” Doran Decl. Ex. K. He also
 19 posted that Parler had “prepared for events like this by never relying on amazons [sic]
 20 proprietary infrastructure and building bare metal products.” *Id.* Ex. J.

21 Parler filed its complaint and motion for temporary restraining order January 11. Dkts. 1,
 22 2. Despite speculation in the Complaint, *see, e.g.*, Compl. (Dkt. 1) ¶ 4, Parler alleges no facts
 23 that could possibly support its claims for breach of contract, tortious interference with
 24 prospective economic advantage, or violations of the Sherman Act. *Id.* ¶ 5.

25 _____
 26 ² Parler accuses Amazon of leaking this letter to the press before sending it to Parler. Compl.
 27 ¶ 21. But this is based on an erroneous assumption that that the time stamp on the email showing
 Parler received the letter reflects *Pacific* Time, rather than *Central* Time. In fact, Amazon sent
 the letter to Parler before the press obtained the letter.

III. ARGUMENT

1 A temporary restraining order is “an extraordinary and drastic remedy.” *Lopez v. Brewer*,
 2 680 F.3d 1068, 1072 (9th Cir. 2012) (citation & internal quotation marks omitted); *see also*
 3 *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). The standard for issuing a
 4 temporary restraining order is “substantially identical” to the standard for issuing a preliminary
 5 injunction. *See Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th
 6 Cir. 2001). The plaintiff must establish (1) “[it] is likely to succeed on the merits”; (2) “[it] is
 7 likely to suffer irreparable harm in the absence of preliminary relief”; (3) “the balance of equities
 8 tips in [its] favor”; and (4) “an injunction is in the public interest.” *Winter*, 555 U.S. at 20.
 9 Failing that, even were there “serious questions going to the merits,” and there are not, a
 10 preliminary injunction may issue only “if the ‘balance of hardships tips *sharply* in the plaintiff’s
 11 favor,’ and the other two *Winter* factors are satisfied.” *Shell Offshore, Inc. v. Greenpeace, Inc.*,
 12 709 F.3d 1281, 1291 (9th Cir. 2013) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d
 13 1127, 1135 (9th Cir. 2011)). Parler has not satisfied any of these elements.

A. Parler Cannot Show A Likelihood of Prevailing on the Merits.

1. AWS Did Not Breach the Agreement.

14 To establish a breach of contract, a plaintiff must identify the “specific term of the
 15 contract” the defendant allegedly breached. *Anderson v. Soap Lake Sch. Dist.*, 191 Wn.2d 343,
 16 376 (2018); *see also Hard 2 Find Accessories, Inc. v. Amazon.com, Inc.*, 58 F. Supp. 3d 1166,
 17 1171 (W.D. Wash. 2014) (no contract claim where plaintiff failed to identify section of contract
 18 breached), *aff’d*, 691 F. App’x 406 (9th Cir. 2017); *see also* Executive 2 Decl. Ex. A §§ 13.4, 14
 19 (Washington law “govern[s] th[e] Agreement”).

20 Parler claims AWS breached the agreement by failing to provide thirty days’ notice of
 21 termination (to be clear, AWS suspended and did not terminate the account). But it was Parler
 22 who breached the agreement, by hosting content advocating violence and failing to timely take
 23 that content down. The Agreement requires Parler to ensure that neither its content nor the
 24 content of Parler’s users violates AWS’s policies or the law. Executive 2 Decl. Ex. A § 4.2. The
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1 policies include the AUP, which prohibits “illegal” or “harmful” use, including content that
 2 “may be harmful to others,” *id.* § 14; *id.* Ex. C, and requires Parler to “immediately suspend
 3 access” if it becomes aware the content violates the agreement. Executive 2 Decl. Ex. A § 4.5.
 4 If Parler fails to comply with these duties, AWS may “immediately” suspend Parler’s account.
 5 *See id.* § 6.1 (a)-(b).

6 The content AWS provided to Parler is merely representative of volumes of content that
 7 poses a security risk and harms others, in direct violation of the AUP. *See id.* Exs. E-F
 8 (examples). That content includes, but is not limited to, calls for violence against a wide range
 9 of individuals, including elected officials, law enforcement officers, and teachers. People have
 10 acted on these calls: Parler was used to incite, organize, and coordinate the January 6 attack on
 11 the U.S. Capitol. *See* Doran Decl. Exs. F-G. AWS reported to Parler, over many weeks, dozens
 12 of examples of content that encouraged violence, including calls to hang public officials, kill
 13 Black and Jewish people, and shoot police officers in the head. Executive 2 Decl. Exs. D-F.
 14 Parler systematically failed to “suspend access” to this content, much less to do so immediately,
 15 and demonstrated that it has no effective process in place to ensure future compliance.³
 16 Executive 2 Decl. ¶ 7. Parler itself has admitted it has a backlog of 26,000 reports of content that
 17 violates its (minimal) community standards that it had not yet reviewed. *Id.* Parler’s own
 18 failures left AWS little choice but to suspend Parler’s account.

19 Parler’s Complaint is replete with insinuations that AWS had equal grounds to suspend
 20 Twitter’s account and thus discriminated against Parler. For example, Parler cites the hashtag
 21 “#hangmikepence,” which briefly trended on Twitter. Mot. ¶ 4. But AWS **does not host**
 22 Twitter’s feed, so of course it could not have suspended access to Twitter’s content. Executive 1
 23 Decl. ¶¶ 5, 7. Twitter has since independently blocked that hashtag. Doran Decl. Ex. L.

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 27 ³ Parler claims it removed the content AWS flagged, Compl. ¶ 29, but Parler failed to do so in a
 timely manner, or required follow up, sometimes several times, Executive 2 Decl. ¶ 5.

1 **2. AWS Did Not Tortiously Interfere with Parler’s Business**
 2 **Expectancies.**

3 Parler cannot plead around its contract claim by asserting a claim for tortious
 4 interference. An interference claim requires the plaintiff to establish (1) a valid contractual
 5 relationship or business expectancy; (2) the defendant had knowledge of that relationship; (3) an
 6 intentional interference inducing or causing a breach or termination of the relationship or
 7 expectancy; (4) the defendant interfered for an improper purpose or used improper means; and
 8 (5) resultant damage. *Pac. Nw. Shooting Park Ass’n v. City of Sequim*, 158 Wn.2d 342, 351
 (2006). Parler fails to allege several of these elements.

9 First and most important, Parler bases its interference claim on its allegation that Amazon
 10 “terminat[ed] Parler’s Agreement.” Compl. ¶ 51. However, where the defendant’s alleged
 11 interference is the exercise of a contractual right, a plaintiff has “no reasonable expectancy” and
 12 cannot assert an interference claim. *Birkenwald Distrib. Co. v. Heublein, Inc.*, 55 Wn. App. 1,
 13 10 (1989). Because the Agreement permitted Amazon to suspend Parler, Parler cannot assert a
 14 tortious interference claim based on the suspension. *Hein v. Chrysler Corp.*, 45 Wn.2d 586, 595,
 15 598 (1954) (where “true gist of the action” is contract breach, courts dismiss interference claims;
 16 damage “may be fully recovered by the injured party in his breach of contract action”).

17 Further, Parler has not alleged any interference was for an improper purpose or done
 18 through improper means. “Improper purpose” requires that the interferor acted out of “greed,
 19 retaliation, or hostility,” *Elcon Constr., Inc. v. E. Wash. Univ.*, 174 Wn.2d 157, 169 (2012), and
 20 “wrongful means” requires the alleged interference be “wrongful by some measure beyond the
 21 fact of the interference itself,” *Pleas v. City of Seattle*, 112 Wn.2d 794, 804 (1989) (citation &
 22 internal quotation marks omitted). Parler speculates that AWS suspended Parler’s account for
 23 improper reasons, but that speculation elides entirely the fact that (as AWS repeatedly warned it)
 24 Parler repeatedly violated the Agreement. *Supra* at III.A.1.

25 **3. AWS Did Not Violate the Sherman Act.**

26 Plaintiff’s Complaint fails to plead the most basic elements of a Section 1 claim. “§1
 27 requires: (1) a ‘contract, combination or conspiracy among two or persons or distinct business

1 entities’; (2) which is intended to restrain or harm trade; (3) ‘which actually injures competition’;
2 and (4) harm to the plaintiff from the anticompetitive conduct.” *NameSpace Inc. v. Internet*
3 *Corp. for Assigned Names and Numbers*, 795 F.3d 1124, 1130 (9th Cir. 2015).

4 As the Supreme Court held in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), a
5 plaintiff claiming a Section 1 violation must plead “enough factual matter (taken as true) to
6 suggest that an agreement was made.” *Id.* at 556-57; *Insulate SB Inc., v. Advanced Fishing*
7 *Systems Inc. et al.*, 797 F. 3d 538, 544-46 (8th Cir. 2015) (applying same principles to vertical
8 agreements). But Parler does not even claim Twitter and AWS communicated about Parler,
9 much less formed an agreement. Nor could it, as a senior AWS executive testified AWS did not
10 authorize and is not aware of such communications. Executive 1 Decl. ¶ 8. The Complaint
11 alleges only that Amazon has agreed to provide cloud infrastructure to deliver Twitter feeds, *see*
12 Compl. ¶¶ 15-16, and then asserts that “AWS is violating Section 1 of the Sherman Antitrust Act
13 in combination with Defendant [sic] Twitter.” *Id.* ¶ 5. As *Twombly* holds, this does not suffice
14 to survive a motion to dismiss: “[A] conclusory allegation of agreement at some unidentified
15 point does not supply facts adequate to show illegality.” 550 U.S. at 557.

16 Further, “[f]ollowing *Twombly*, courts dismiss Section 1 complaints when there is an
17 independent business justification for the observed conduct and no basis for rejecting it as the
18 explanation for the conduct.” *In re McCormick & Co. Inc.*, 217 F. Supp. 3d 124, 132-34 (D.D.C.
19 2016) (granting motion to dismiss based on *Twombly*, citing other cases); *see also Souza v.*
20 *Estate of Bishop*, 821 F.2d 1132, 1335 (9th Cir. 1987) (Where there is an “understandable and
21 legitimate business reason” for each defendant’s conduct, plaintiff fails to state a Section 1
22 claim). Here, not only does AWS have a legitimate business reason to suspend Parler’s account,
23 but that reason—keeping content that violates its agreement with customers off its servers—is
24 the only plausible conclusion. To be clear, AWS has no incentive to stop doing business with
25 paying customers that comply with its agreements. Parler failed to meet that obligation, and fails
26 to state a claim for an antitrust violation, much less to show a likelihood of prevailing on the
27 merits of its antitrust claim.

1 Parler’s antitrust allegations fail also because they do not even plead the basic
 2 requirements of a Sherman Act claim, such as how competition is harmed, *NYNEX Corp. v.*
 3 *Discon, Inc.*, 525 U.S. 128, 135 (1998), the relevant product and geographic markets, *Tanaka v.*
 4 *Univ. of S. Cal.*, 252 F.3d 1059, 1063 (9th Cir. 2001), the share of those markets enjoyed by
 5 AWS, *Rick-Mik Enters., Inc. v. Equilon Enters. LLC*, 532 F.3d 963, 972-73 (9th Cir. 2008), and
 6 others. This is especially important where, as here, Parler freely admits that it has access to
 7 numerous potential web-hosting service providers—not claimed to be involved in or restrained
 8 by the alleged conspiracy—with whom Parler can freely contract. *See* Compl. ¶ 23. Those
 9 alternatives alone preclude Parler from stating a plausible claim for relief. *See Omega Envtl.,*
 10 *Inc. v. Gilbarco, Inc.*, 127 F.3d 1157, 1162-64 (9th Cir. 1997).

11 4. Section 230 Bars Interference and Antitrust Claims.

12 In addition to their facial deficiencies, Parler’s interference and antitrust claims also fail
 13 under Section 230(c)(2) of the Communications Decency Act. Under that statute, the provider of
 14 an “interactive computer service” is immune for acting in good faith to restrict access to material
 15 that is excessively violent, harassing, or otherwise objectionable. *Barnes v. Yahoo!, Inc.*, 570
 16 F.3d 1096 1105 (9th Cir. 2009) (citing 47 U.S.C. § 230(c)(2)). That is precisely what AWS did
 17 here: removed access to content it considered “excessively violent” and “harassing[.]” 47
 18 U.S.C. § 230(c)(2)(A); *see Zango, Inc. v. Kaspersky Lab, Inc.*, 2007 WL 5189857, at *4 (W.D.
 19 Wash. Aug. 28, 2007) (assessment of objectionable content is subjective to the provider), *aff’d*,
 20 568 F.3d 1169 (9th Cir. 2009); *Holomaxx Techs. v. Yahoo!, Inc.*, 2011 WL 865794, at *5 (N.D.
 21 Cal. Mar. 11, 2011) (same).⁴

22
 23 ⁴ Parler’s antitrust and interference claims are also barred by § 230(c)(1). *See, e.g., Riggs v.*
 24 *MySpace, Inc.*, 444 F. App’x 986, 987 (9th Cir. 2011) (Section 230(c)(1) immunizes “decisions
 25 to delete [plaintiff’s] user profiles”); *Fed. Agency of News LLC v. Facebook, Inc.*, 432 F. Supp.
 26 3d 1107, 1116-21 (N.D. Cal. 2020) (dismissing claims based on removal of plaintiff’s account,
 27 postings, and content); *Mezey v. Twitter, Inc.*, 2018 WL 5306769, at *1 (S.D. Fla. July 19, 2018)
 (dismissing plaintiff’s claims that Twitter unlawfully suspended his account); *Dipp-Paz v.*
Facebook, 2019 WL 3205842, at *3 (S.D.N.Y. July 12, 2019) (Section 230 bars claims arising
 from suspension of plaintiff’s Facebook account).

B. The Balance of Equities and Public Interest Disfavor an Injunction.

To obtain injunctive relief, a plaintiff also “must establish that ‘the balance of equities tips in [its] favor.’” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1138 (9th Cir. 2009) (quoting *Winter*, 555 U.S. at 20). “The less certain ... the likelihood of success on the merits, the more plaintiffs must convince the district court that the public interest and balance of hardships tip in their favor.” *Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 918 (9th Cir. 2003). Courts also must consider whether the relief would adversely affect the rights of nonparties or the public. *See Winter*, 555 U.S. at 26.

The hardships on AWS and the public from an injunction would far outweigh any speculative damage Parler claims it may suffer from a short interruption of its service.

First, compelling AWS to host Parler content would threaten the safety of individuals. This risk is not speculative. The violence at the U.S. Capitol was assisted by content posted by Parler users. *See, e.g.*, Doran Decl. Ex. F (sites including Parler used to provide “directions on which streets to take to avoid the police and which tools to bring to help pry open doors”). Forcing Amazon to host such content poses further risk, including at the inauguration next week. Such a requirement also poses a risk to Amazon itself, with posts calling for others to “burn down Amazon delivery trucks” until they “reverse course.” Executive 2 Decl. Ex. F. By suspending Parler’s account, AWS seeks to prevent illegal and violent acts from being coordinated using AWS’s resources—a right the Agreement secures.

Second, any injunction would impair AWS’s ability to take swift action against customers who misuse its services to promote violence. Requiring AWS to allow services like Parler to remain active through weeks or months of court proceedings would heighten the risk of violence and harm to the public.

Finally, Parler’s allegations of harm contradict its own public statements. Parler’s CEO has assured users that Parler “prepared for events like [the termination] by never relying on amazons [sic] proprietary infrastructure,” that the site will be fully operational “with less than [sic] 12 hours of downtime” after termination, and that Parler has “many [companies] competing

1 for [its] [hosting] business.” Doran Decl. Exs. J-K. Accordingly, the balance of the equities and
 2 public interest weigh strongly against the issuance of any injunction.

3 **C. Parler Has Failed to Show It Will Suffer Irreparable Harm Absent an**
 4 **Injunction.**

5 A TRO is also not warranted because Parler has not shown irreparable harm is likely.
 6 *Alliance for the Wild Rockies*, 632 F.3d at 1131. Irreparable harm is “harm which cannot be
 7 redressed by a legal or an equitable remedy following trial.” *Campbell Soup Co. v ConAgra,*
 8 *Inc.*, 977 F.2d 86, 91 (3rd Cir. 1992) (citation & internal quotation marks omitted). Monetary
 9 harm is not “irreparable” injury. *L.A. Mem’l Coliseum Comm’n*, 634 F.2d at 1202.

10 Parler has not identified irreparable harm. AWS has promised to preserve Parler’s data
 11 and help Parler migrate its services elsewhere. Dkt. 1-1. Parler’s CEO has acknowledged that
 12 the service never has relied on AWS exclusively. Doran Decl. Ex. J. He also told Parler users
 13 that the service may be operational within twelve hours of AWS’s suspension of Parler’s
 14 account. *Id.* Ex. K. A temporary service interruption is not irreparable harm, and any alleged
 15 harm would be compensable by damages.

16 **IV. CONCLUSION**

17 Because Parler has not met the exceptionally high standard for a TRO, AWS respectfully
 18 asks the Court to deny Parler’s motion.

19 DATED this 12TH day of January, 2021.

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