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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

JOHN DOE, et al.,
Plaintiffs,
v.
GOOGLE LLC, et al.,
Defendants.

Case No. 20-cv-07502-BLF

**ORDER DENYING APPLICATION
FOR TEMPORARY RESTRAINING
ORDER**

United States District Court
Northern District of California

Plaintiffs John Doe, Michael Doe, James Doe, Henry Doe, Robert Doe, Christopher Doe, Matthew Doe, Polly St. George, Scott Degroat, David J. Hayes, Daniel Lee, Mishel Mccumber, Jeff Pedersen, Jordan Sather, and Sarah Westall (collectively, “Plaintiffs”) filed the complaint in this action on October 26, 2020, asserting claims against Defendants Google LLC (“Google”) and YouTube LLC (“YouTube”) for breach of contract, breach of covenant of good faith and fair dealing, and violation of First Amendment right to freedom of speech. *See* Compl., ECF 1. The next day, Plaintiffs filed a motion seeking a temporary restraining order (“TRO”) and an order to show cause why a preliminary injunction should not issue. *See* Mot., ECF 8. In light of the time between the conduct alleged in the complaint and the application for the TRO, The Court directed Defendants to respond by October 30, 2020. ECF 16. The Court held a video hearing on the motion on November 2, 2020, at which Plaintiffs and Defendants’ counsels appeared. As set forth below, Plaintiffs’ motion is DENIED.

I. BACKGROUND

Plaintiffs are “journalists, videographers, advocates, commentators and other individuals who

1 regularly exercise their right to free speech under the First Amendment of the Constitution of the
2 United States.” Compl. ¶ 1. Defendants are YouTube, an online video-sharing platform, and
3 Google, YouTube’s parent company.

4 Plaintiffs created eighteen channels on the YouTube platform. *Id.* Plaintiffs describe their
5 channels as “extremely controversial” “conservative news” channels that feature content about
6 “Hunter Biden and the Ukraine scandal,” “the ongoing corruption probe,” “social media
7 censorship,” “race relations or protests in America,” and “anonymous posts on political issues by
8 someone identifying themselves as ‘Q.’” Mot. at 8, 15; Compl. ¶ 8. Plaintiffs allege that as of
9 October 15, 2020, their channels attracted over 4.5 million subscribers and over 800 million
10 views. *Id.* In posting content to the YouTube platform, Plaintiffs entered into a contract with
11 YouTube, as detailed in YouTube’s Terms of Service (“TOS”). Compl. ¶ 1; *see* ECF 21-1, Exhs. 1
12 (TOS), 2 (Community Guidelines), 3 (harassment and cyberbullying policy), 4 (hate speech
13 policy), and 5 (channel or account terminations).

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16 Although the complaint and TRO application provide only vague descriptions about the
17 content on Plaintiffs’ channels, Defendants offer further details. Defendants submitted the
18 declaration of a YouTube employee who works on the company’s Trust and Safety team.
19 YouTube Decl., ECF 21-1. The employee stated that Plaintiffs’ channels “were rife with content
20 espousing harmful conspiracy theories” and contained videos with “horrifying and unsubstantiated
21 accusations of violent and criminal conduct supposedly committed by specific individuals.”
22 *Oppo.*, ECF 21, at 5 (citing YouTube Decl., ¶¶ 23-25). For example, the employee reported that
23 videos posted on the channel “JustInformed Talk” suggested that Hillary Clinton “was involved
24 with satanic rituals with children,” (including “human ritual sacrifice”) while videos posted on the
25 “TRUReporting” channel made claims about famous Americans, including that one “eats babies,”
26 another “killed his wife,” others are “pedophiles or ‘pedowoods,’” and others still “breed children
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1 in order to sell them.” YouTube Decl. ¶¶ 23-24.

2 On October 2, 2020, the United States House of Representatives passed Resolution 1154 that
3 “condemn[ed] QAnon and reject[ed] the conspiracy theories it promotes” based on the fact that
4 QAnon conspiracy motivated anti-Semitism and domestic extremists to engage in criminal or
5 violent activity. Condemning QAnon and rejecting the conspiracy theories it promotes, H.R. Res.
6 1154, 116th Cong. (2020). The Resolution further highlighted that “Facebook, Twitter, and
7 Google [had already] removed or blocked QAnon groups and content from their platforms for
8 violating their policies against misinformation, bullying, hate speech, and harassment.” *Id.*

9 On October 15, 2020, YouTube announced that it would “tak[e] another step in [its] efforts to
10 curb hate and harassment by removing more conspiracy theory content used to justify real-world
11 violence.” *See* “Managing harmful conspiracy theories on YouTube,” YouTube, Oct. 15, 2020,
12 <https://blog.youtube/news-and-events/harmful-conspiracy-theoriesyoutube>. The post explicitly
13 mentioned QAnon. *Id.* To this end, YouTube amended its Community Guidelines harassment and
14 cyberbullying policy to include a new example of prohibited behavior: “Targeting an individual
15 and making claims they are involved in human trafficking in the context of a harmful conspiracy
16 theory where the conspiracy is linked to direct threats or violent acts.” *Compare* ECF 14, Ex. C
17 (Internet Archive, October 15, 2020) *with* ECF 14, Ex. D (Internet Archive, October 17, 2020).

18 That same day, YouTube “abruptly instigated a mass purge of conservative accounts,
19 including those operated by plaintiffs, based on its ‘hate and harassment’ policies” (“the
20 Takedown”). Compl. ¶ 6. This purge included Plaintiffs’ YouTube channels. Defendants
21 confirmed that YouTube “terminated (i.e., removed) Plaintiffs’ channels from the YouTube
22 service for multiple violations of the Community Guidelines.” YouTube Decl. ¶ 22. Plaintiffs
23 contend that the Takedown occurred before YouTube amended its Community Guidelines. Mot. at
24 6. Defendants, however, maintain that the Takedown occurred only after the Community
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1 Guidelines were amended. YouTube Decl. ¶ 22.

2 Plaintiffs submitted evidence that they received an email notice from YouTube that their
3 YouTube channel had been suspended or deleted. *See* ECF 14 at 8 ¶ 8, 11 ¶ 8, 14 ¶ 8, 17 ¶ 8, 20 ¶
4 8, 22 ¶ 8, 25 ¶ 8, 27 ¶ 8, 29 ¶ 8, 31 ¶ 8, 34 ¶ 8, 36 ¶ 8, 38 ¶ 8, 40 ¶ 8, 43 ¶ 8 (declarations). The
5 notice referenced YouTube’s cyberbullying and harassment policy, although Plaintiffs believe that
6 “[their] content was not cyberbullying or harassing in the ways described in the policy that existed
7 on or before October 15, 2020.” *Id.* YouTube’s Trust and Safety team member explained that
8 YouTube terminated Plaintiffs’ channels because videos in those channels “may incite others to
9 ‘take action’ and may cause harm to our users or other people.” YouTube Decl. ¶ 26. The
10 employee pointed to a May 2019 Federal Bureau of Investigation bulletin that cited QAnon as
11 among the conspiracy theories that “very likely will emerge, spread, and evolve in the modern
12 information marketplace, occasionally driving both groups and individual extremists to carry out
13 criminal or violent acts.” *Id.*

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15 Plaintiffs filed suit in this Court alleging that Defendants violated their contractual and First
16 Amendment rights when they “excised them and their political viewpoints from the YouTube
17 platform without notice, just days 19 before the 2020 presidential election.” Compl. ¶¶ 1, 69-215
18 (claims for relief). Plaintiffs request the Court issue a TRO that the “Defendants, along with their
19 agents, employees, and successors, shall be restrained and enjoined from breaching their contract
20 with Plaintiffs, as set forth in YouTube’s Terms of Service, by taking down their videos and/or
21 YouTube channels that discuss, analyze, or mention “QAnon.”” Mot. at 18. Plaintiffs seek an
22 injunction compelling YouTube to restore their content.
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25 II. LEGAL STANDARD

26 Preliminary injunctive relief, whether in the form of a temporary restraining order or a
27 preliminary injunction, is an “extraordinary and drastic remedy,” that is never awarded as of right.
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1 *Munaf v. Geren*, 553 U.S. 674, 689-690 (2008) (internal citations omitted). “It is so well settled as
2 not to require citation of authority that the usual function of a preliminary injunction is to preserve
3 the status quo ante litem pending a determination of the action on the merits.” *Tanner Motor*
4 *Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 808 (9th Cir. 1963). A temporary restraining order is “not
5 a preliminary adjudication on the merits but rather a device for preserving the status quo and
6 preventing the irreparable loss of rights before judgment.” *Sierra On-Line, Inc. v. Phoenix*
7 *Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984) (citation omitted).
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9 The standard for issuing a temporary restraining order is identical to the standard for issuing a
10 preliminary injunction. *Stuhlberg Int'l Sales Co., Inc. v. John D. Brush & Co.*, 240 F.3d 832, 839
11 n.7 (9th Cir. 2001); *Lockheed Missile & Space Co. v. Hughes Aircraft*, 887 F. Supp. 1320, 1323
12 (N.D. Cal. 1995). An injunction is a matter of equitable discretion and is “an extraordinary remedy
13 that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter*
14 *v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). A plaintiff seeking preliminary
15 injunctive relief must establish “[1] that he is likely to succeed on the merits, [2] that he is likely to
16 suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in
17 his favor, and [4] that an injunction is in the public interest.” *Id.* at 20. “[I]f a plaintiff can only
18 show that there are serious questions going to the merits – a lesser showing than likelihood of
19 success on the merits – then a preliminary injunction may still issue if the balance of hardships tips
20 sharply in the plaintiff’s favor, and the other two *Winter* factors are satisfied.” *Friends of the Wild*
21 *Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014) (internal quotation marks and citations omitted).
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24 Because the Plaintiffs here seek a mandatory injunction—one that “orders a responsible party
25 to ‘take action’”—“[they] must establish that the law and facts clearly favor [their] position, not
26 simply that [they are] likely to succeed.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH &*
27 *Co.*, 571 F.3d 873, 879 (9th Cir. 2009) (quoting *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 484
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