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12 UNITED STATES DISTRICT COURT
13
14 NORTHERN DISTRICT OF CALIFORNIA
15
16 SAN JOSE DIVISION

17 PHIL MICKELSON; TALOR GOOCH;
HUDSON SWAFFORD; MATT JONES;
18 BRYSON DECHAMBEAU; ABRAHAM
ANCER; CARLOS ORTIZ; IAN POULTER;
19 PAT PEREZ; JASON KOKRAK; and
PETER UIHLEIN,

20 Plaintiffs,

21 v.

22 PGA TOUR, INC.,

23 Defendant.

Case No. 5:22-cv-04486-BLF

**DEFENDANT PGA TOUR, INC.'S
OPPOSITION TO TRO PLAINTIFFS'
MOTION FOR A TEMPORARY
RESTRAINING ORDER**

Judge: Hon. Beth Labson Freeman
Date: August 9, 2022
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I. INTRODUCTION

1
2 Throughout their careers, TRO Plaintiffs Talor Gooch, Hudson Swafford, and Matt Jones
3 have enjoyed the benefits of the PGA TOUR's ("PGA TOUR" or "TOUR") unique structure and
4 role in the sport of golf. By enabling professional golfers to pool their media rights, the TOUR
5 has driven media and sponsorship money into the sport for the benefit of all TOUR members. But
6 the TOUR could not function in this mutually beneficial way without TOUR members' annual
7 agreement to abide by the terms of the PGA TOUR Handbook & Tournament Regulations (the
8 "Regulations"). Under these Regulations, members agree not to play in, and thereby contribute
9 their media rights to, non-TOUR golf events held in North America that conflict with PGA
10 TOUR events. These Regulations thus maintain the value of the TOUR's pooled media rights.

11 Despite knowing full well that they would breach TOUR Regulations and be suspended
12 for doing so, Plaintiffs have joined competing golf league LIV Golf, which has paid them tens
13 and hundreds of millions of dollars in guaranteed money supplied by Saudi Arabia's sovereign
14 wealth fund to procure their breaches. TRO Plaintiffs now run into Court seeking a mandatory
15 injunction to force their way into the TOUR's season-ending FedExCup Playoffs, an action that
16 would harm all TOUR members that follow the rules. The antitrust laws do not allow Plaintiffs to
17 have their cake and eat it too. The TOUR is "free to choose the parties with whom [it] will deal,"
18 *Pac. Bell Tel. Co. v. linkLine Commc'ns, Inc.*, 555 U.S. 438, 448 (2009), and it has no duty to
19 provide Plaintiffs and LIV a platform to freeride off the TOUR's investments. As one TOUR
20 member aptly put it, "I don't have an issue with anyone going to LIV. I have an issue with them
21 wanting to comeback and play [on the TOUR]. If the grass is so green, why do you want to come
22 back?" As another said about Plaintiffs' gambit: "They're suing the 200 card-carrying members
23 of the PGA Tour. They chose to go this route and play less and now they want to play more."

24 The injunction TRO Plaintiffs seek is legally baseless. TRO Plaintiffs bear the burden of
25 showing (1) a substantial likelihood of success on the merits; (2) that they will be irreparably
26 injured without relief; (3) that the threatened injury outweighs the harm a TRO would inflict on
27 the TOUR; and (4) that the TRO would serve the public interest. TRO Plaintiffs cannot satisfy
28 *any*, let alone *all*, of the well-established requirements for the Court to enter such a drastic

1 order—particularly under the Ninth Circuit’s heightened standard for mandatory injunctions.

2 TRO Plaintiffs have waited nearly *two months* to seek relief from the Court, fabricating
3 an “emergency” they now maintain requires immediate action. It doesn’t. Their ineligibility for
4 TOUR events was foreseeable when they accepted millions from LIV to breach their agreements
5 with the TOUR, and they knew for a fact that they were suspended on June 9. The harm they now
6 allege from their suspensions is 100% economic and capable of redress with money damages.
7 Indeed, several other LIV players, including four other Plaintiffs *in this case*, recognize there is
8 no emergency or irreparable harm; they too have qualified to play in the FedExCup but have not
9 asked the Court for the extraordinary relief sought through this motion. The Court should use its
10 equitable powers to redress real emergencies, not engineered ones by parties who knowingly
11 accepted multi-million-dollar payouts to place themselves in the situation they are in.

12 Moreover, neither the equities nor the public interest tip in favor of TRO Plaintiffs, who
13 willfully breached their contracts with the TOUR for a pile of cash supplied by LIV. LIV is not a
14 rational economic actor, competing fairly to start a golf tour. It is prepared to lose billions of
15 dollars to leverage Plaintiffs and the sport of golf to “sportswash” the Saudi government’s
16 deplorable reputation for human rights abuses. If Plaintiffs are allowed to breach their TOUR
17 contracts without consequence, the entire mutually beneficial structure of the TOUR, an
18 arrangement that has grown the sport and promoted the interests of golfers going back to Arnold
19 Palmer and Jack Nicklaus, would collapse.

20 Finally, TRO Plaintiffs have not proved that the facts and law clearly favor them on any of
21 their claims. TRO Plaintiffs cannot establish that they are likely to win their antitrust claims—
22 they lack antitrust standing, cannot show that the TOUR has monopoly power given LIV’s
23 successful entrance, fail to demonstrate any restriction of competition, and challenge Regulations
24 that are procompetitive. Nor can TRO Plaintiffs prevail on their argument that their suspensions
25 should be “abated” during their appeals. The TOUR’s Regulations empower the Commissioner to
26 immediately suspend serial offenders like TRO Plaintiffs, and to maintain those suspensions for
27 their ongoing violations during their appeals. TRO Plaintiffs’ attempt to upend the TOUR’s
28 disciplinary process on procedural grounds is also meritless. The motion should be denied.

II. FACTUAL BACKGROUND

A. The PGA TOUR

1. The PGA TOUR promotes all members' interests

The PGA TOUR began in 1968 when a small group of professional golfers left the PGA of America and formed the Association of Professional Golfers, a member organization that eventually became the TOUR. Declaration of Andrew Levinson (“Levinson Decl.”) ¶ 3. The founding members elected to pool their media rights and negotiate jointly for television exposure and corporate sponsorship. *Id.* ¶ 4. They wanted to increase prize money and improve playing conditions by aggregating their rights—thereby increasing their collective value—while preserving the freedom to plan their own travel and playing schedules, practice as and when they saw fit, and otherwise operate their respective “golf businesses” independently. *Id.*

The PGA TOUR has remained a membership organization ever since. *Id.* ¶¶ 5, 8. Unlike other sports organizations such as the NFL or NBA, there are no “owners” on the TOUR that control or contract with individual golfers or teams of golfers. *Id.* ¶ 8. The TOUR is a 501(c)(6) non-profit membership organization. *Id.* ¶¶ 2, 8. Its revenues come principally from the sale of its members’ bundled media rights and sponsorships, and are used to fund its operations, tournament purses, membership benefits (e.g., healthcare and retirement plans), investments in growing the game of golf, and significant charitable initiatives. *Id.* ¶ 5. These revenue streams depend on assurances to sponsors and media outlets that the TOUR has been assigned and is authorized to sell its members’ rights. *Id.* As one recent article noted, “if the [PGA TOUR’s] media rights were fragmented—say, if CBS Sports didn’t have the exclusive rights to air this weekend’s Genesis Invitational and players could individually sell their live and archived broadcast rights—the TV deals would be worthless.” Declaration of Nicholas Goldberg (“Goldberg Decl.”) Ex. 45.

These increased sponsorship, broadcast, and other revenues are distributed to members in the form of tournament purses, bonuses, retirement plan contributions, and other benefits. Levinson Decl. ¶ 6. In 2021, \$916 million—approximately 98% of the TOUR’s net revenue—was allocated to players, tournaments (i.e., a portion of the sponsorship revenue related to a specific tournament is paid to the tournament), and charities. *Id.* Of that amount, \$770 million

1 was allocated to players, including \$443 million to player prize money and benefits, \$110 million
2 to player bonus programs, \$17 million to Player Retirement Plan contributions, and \$200 million
3 to Player Retirement Plan earnings. *Id.* The TOUR’s structure and marketing creates the
4 opportunity for aspiring golfers—as TRO Plaintiffs once were—to hone their skill, establish their
5 reputation, and leverage the collective efforts of their predecessors and peers to raise their profile
6 and obtain sponsorships. *Id.* ¶¶ 2–25.

7 TOUR members are also directly involved in TOUR governance. *Id.* ¶¶ 7, 14. The TOUR
8 is governed by its Policy Board, which includes four player directors, and a fifth player director is
9 slated to join in January 2023. *Id.* The TOUR also includes a sixteen-member Player Advisory
10 Council, elected by TOUR members, which advises and consults with the Policy Board, including
11 membership-elected player directors, and Commissioner on major TOUR decisions. *Id.*

12 **2. The Regulations serve TOUR members’ interests by driving up media and**
13 **sponsorship revenues that are distributed to players**

14 Like all membership organizations, the TOUR has Regulations that provide certain
15 obligations flowing both from the TOUR to its members and from the members to the TOUR.
16 Levinson Decl. ¶¶ 14–35 & Ex. 6. Among the TOUR’s long-standing player Regulations are ones
17 that limit participation in events that conflict with scheduled TOUR events and in non-TOUR golf
18 programs live or recorded on media. *Id.* ¶¶ 17–25 & Ex. 6 at Art. V.A–B. These Regulations
19 contribute to the success of scheduled TOUR events by ensuring representative fields and provide
20 substantial benefits to sponsors and media partners. *Id.* ¶ 17. As a result, the Regulations make the
21 TOUR’s media rights more valuable, leading to higher sponsorship and broadcast revenues,
22 which in turn are distributed to members. *Id.*

23 Players are eligible in certain circumstances for three or more conflicting event releases
24 per season to play in non-TOUR tournaments outside North America. *Id.* ¶ 18. Conflicting event
25 releases are not permitted for non-TOUR tournaments held in North America because those
26 tournaments directly conflict with TOUR events for which the TOUR’s domestic television
27 partners have paid substantial fees. *Id.* ¶ 20. Conflicting event releases for tournaments outside
28 North America may be denied if the Commissioner determines that it would cause the TOUR to
violate a contractual commitment to a tournament sponsor or would otherwise significantly and

1 unreasonably harm the TOUR and its sponsors. *Id.* ¶ 19. The TOUR has regularly granted
2 conflicting event releases for players where appropriate. *Id.*

3 Nothing in the Regulations prevents members from resigning their TOUR membership at
4 any time to play on a competing tour, including LIV, or to start their own competing tour or
5 events. Levinson Decl. ¶¶ 21, 25, 101–103. The Regulations do not have any non-compete
6 provision. *Id.* ***Plaintiffs themselves*** joined LIV. Numerous other golfers have joined LIV as well,
7 reportedly in exchange for massive contracts, including Dustin Johnson, Sergio Garcia, and
8 Graeme McDowell, who resigned their TOUR memberships upon joining LIV, recognizing that
9 they cannot participate in TOUR events and work for LIV at the same time. Goldberg Decl. Exs.
10 52, 54.

11 As discussed in the accompanying declaration of economist Dr. Mark Israel, the eligibility
12 and media provisions of the TOUR’s Regulations do not thwart competition but rather promote it.
13 Declaration of Mark Israel (“Israel Decl.”) ¶¶ 10–13, 40–63, 85–107. The eligibility and media
14 provisions reduce inefficiencies by limiting competitors’ ability to freeride on the PGA TOUR’s
15 substantial investments in developing and promoting its players and the TOUR. *Id.* ¶¶ 85–95.
16 They enhance incentives for the TOUR’s media partners to invest in promoting the TOUR’s
17 events and players, thereby increasing the value of the media rights and the revenues the TOUR
18 uses to compensate players. *Id.* ¶ 94. And the Regulations protect the TOUR’s investment in and
19 preservation of its reputation, by seeking to limit its association with LIV and LIV players’ Saudi
20 Arabian backers. *Id.* ¶¶ 101–104. Allowing Plaintiffs to vitiate the TOUR’s eligibility and media
21 rights Regulations would force the TOUR to cooperate with its competitor LIV, by providing a
22 platform for Plaintiffs and other LIV golfers. *Id.* ¶¶ 92–93. And it would impose severe harm on
23 the TOUR and its rule-abiding members by devaluing their media rights and upending the
24 TOUR’s substantial investments in media partnerships and sponsorships. *Id.* ¶¶ 88–93.

25 **B. Saudi-Backed LIV Golf**

26 LIV Golf was founded in 2021 with financial backing from the Public Investment Fund
27 (“PIF”), the sovereign wealth fund of Saudi Arabia, which holds more than \$500 billion in assets.
28 Goldberg Decl. Ex. 43. LIV is the most recent example of “sportswashing,” a strategy by the

1 Saudi government to use sports in an effort to improve its reputation for human rights abuses and
2 other atrocities. *Id.* Exs. 44, 57, 61, 81. With access to nearly unlimited funding through the PIF,
3 LIV has been able to compete for elite players quickly and successfully and operate without
4 consideration of profitability. *Id.* Exs. 65, 80. To date, PIF has committed at least \$2 billion of
5 funding to LIV, which LIV is using to pay eight- and nine-figure advances to some TOUR
6 members, provide free tournament tickets to spectators, and fully fund all of its operational costs,
7 including hundreds of millions of dollars in tournament purses. *Id.* Exs. 48, 65, 82. There is no
8 discernible plan for how the PIF will recoup its \$2 billion investment in LIV. *Id.*

9 During its short existence, LIV has established itself as a competing golf tour, having
10 already successfully recruited more than twenty PGA TOUR members, including TRO Plaintiffs.
11 *Id.* Ex. 85. Far from struggling to recruit golfers, LIV’s CEO stated in a televised interview with
12 Tucker Carlson just two days before Plaintiffs filed this lawsuit that LIV is oversubscribed for
13 golfers and that “the list gets longer, longer, longer for the players that want to” join LIV. *Id.* Ex.
14 84. It has also been reported that players joining LIV have received tens-of-millions of dollars,
15 and in some cases hundreds-of-millions of dollars, in guaranteed payments to play for LIV. *Id.*
16 Exs. 80, 83. Plaintiff Phil Mickelson reportedly received \$200 million to join LIV, and other
17 prominent TOUR members such as Plaintiff Bryson DeChambeau and Dustin Johnson have
18 reportedly received more than \$100 million each. *Id.* Ex. 80.

19 LIV represents a stark departure from golf’s long-earned reputation as a meritocracy in
20 which players are paid based on their skill and performance. Unlike the PGA TOUR, LIV’s golf
21 tournaments feature guaranteed money to every participant. Khosla Decl. ¶¶ 9, 15–17. LIV has
22 also adopted a team format that provides additional opportunities for its golfers to play for
23 exorbitant prize money financed by the Saudi PIF. *Id.* ¶¶ 8, 12, 15–17; Goldberg Decl. Ex. 47.
24 LIV’s inaugural season includes eight events, five of which are in North America. Khosla Decl. ¶
25 16. By its second season in 2023, LIV has announced plans to expand to fourteen events,
26 including ten in North America, with prize money totaling \$405 million. Goldberg Decl. Ex. 78.

27 LIV’s direct ties to the Saudi government have cast a black cloud over its events and its
28 players. Goldberg Decl. Ex. 63. Even before LIV officially launched, Plaintiff Phil Mickelson

1 admitted to a golf writer that LIV was nothing more than “sportswashing” by the Saudi’s brutally
2 repressive regime. *Id.* Ex. 46. “They’re scary mother****ers to get involved with,” he said. *Id.*
3 “We know they killed [*Washington Post* reporter and U.S. resident Jamal] Khashoggi and have a
4 horrible record on human rights. They execute people over there for being gay.” *Id.* While
5 Mickelson and the other Plaintiffs nevertheless accepted the enormous paychecks that LIV
6 offered them, many golfers refused to do so, presumably due to concerns over LIV’s ties to the
7 Saudi government or their preference for the TOUR’s competitive offering, or both. *Id.* Exs. 59,
8 60, 62, 74. Tiger Woods, for example, rejected an offer from LIV of \$700–\$800 million. *Id.* Ex.
9 84. Fans and community members have also protested LIV’s events, including, organizations
10 seeking justice for the victims and families affected by the 9/11 attacks. *Id.* Exs. 68, 70, 73, 77.

11 **C. TRO Plaintiffs’ Contracts with LIV That Breach Their Agreements with the TOUR**

12 TRO Plaintiffs Gooch, Swafford, and Jones have collectively earned \$37 million in
13 official prize money on the PGA TOUR, including over \$7 million to date this season. Levinson
14 Decl. ¶ 36. [REDACTED]

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
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[REDACTED]

TRO Plaintiffs chose to breach their agreements with the TOUR in exchange for

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

D. The PGA TOUR’s Right to Suspend Players Who Violate TOUR Regulations

Under the rules approved by the Policy Board, the TOUR has the authority to impose discipline on members who violate the Regulations or otherwise threaten the TOUR’s well-being or integrity. Levinson Decl. ¶¶ 26–35 & Ex. 6 at Art. VII. The Regulations establish a probation procedure to deal with players who serially violate the rules in a manner that the Commissioner determines requires that they be suspended from play while the disciplinary process against them runs its course. *Id.* ¶¶ 33–35 & Ex. 6 at Art. VII.C. If a member breaks the rules, he may be notified that he is being placed on probation. *Id.* If he then commits another infraction, the Commissioner, in his discretion, may immediately suspend the member’s playing privileges, preventing him from playing in TOUR events until his disciplinary process concludes. *Id.* This probation procedure prevents a serial offender from disrupting TOUR events while his disciplinary process unfolds, which goes to the heart of the Commissioner’s duty to protect the TOUR, its members, its partners, its sponsors, and their reputations. *Id.* ¶ 35.

The Regulations establish a separate disciplinary procedure for the Commissioner to impose minor, intermediate, or major penalties for violations of TOUR Regulations. *Id.* ¶¶ 30–32 & Ex. 6 at Art. VII.D. Members receive notice of violations and proposed penalties, are provided an opportunity to respond, and may appeal the imposition of an intermediate or major penalty to the Appeals Committee, which is comprised of independent (non-player) members of the TOUR

1 Policy Board. *Id.* ¶¶ 30–31 & Ex. 6 at Art. VII.A and VII.E. In some cases, the effective date of a
2 penalty may be stayed while a member pursues an appeal. *Id.* ¶ 32 & Ex. 6 at Art. VII.E.2.

3 Both the probation and penalty procedures were invoked against TRO Plaintiffs here.
4 First, under the probation procedure, the TOUR notified all three TRO Plaintiffs in the first week
5 of June that they were being placed on probation under Article VII.C. *Id.* ¶¶ 39–40, 61–62, 80–
6 81. The probation notices, which were sent to Swafford and Jones on June 3, and to Gooch on
7 June 5, warned them that under the probation procedure they could be immediately suspended
8 from playing in TOUR events if they committed further violations. *Id.* Exs. 8, 21, 32. After they
9 violated the rules again—and made clear that they intended to continue doing so—the TOUR
10 notified each of them on June 9 that the Commissioner was exercising his authority under Article
11 VII.C to suspend them from play immediately. *Id.* ¶¶ 41, 43, 63, 65, 82, 84 & Exs. 9, 22, 33.
12 Those suspensions have not been revoked and remain in effect through the completion of TRO
13 Plaintiffs’ disciplinary proceedings. *Id.* ¶¶ 51, 57, 73, 92.

14 Separately, under the penalty procedure in Article VII.D, TRO Plaintiffs, who repeatedly
15 played in conflicting LIV Golf events without releases, each received four notices of disciplinary
16 inquiries: Gooch on June 3, June 9, June 25, and June 30; and Swafford and Jones on June 1, June
17 9, June 25, June 29, and June 30. *Id.* ¶¶ 38, 42, 45, 47, 60, 64, 68, 71, 80, 84, 88, 90 & Exs. 7, 9,
18 10, 12, 20, 22, 24, 26, 31, 33, 35, 36, 37. After considering the information they submitted in
19 response, the TOUR imposed major penalties on each of them. *Id.* ¶¶ 46, 48–57, 66, 69–76, 86–
20 96 & Exs. 13, 15, 25, 28, 36, 39. They have appealed those penalties, and the appeal process is
21 currently underway. *Id.* ¶¶ 50, 54, 72, 92. However, because the TOUR suspended them under the
22 separate probation procedure in Article VII.C, and due to their ongoing violations, their appeals
23 of their major penalties do not stay their suspensions. *Id.* ¶¶ 51, 57, 73, 93 & Ex. 6 at Art. VII.C.

24 **E. TRO Plaintiffs Delay Filing This Action**

25 TRO Plaintiffs have known since June 9—and indeed, earlier—that they would violate the
26 TOUR’s Regulations and forfeit their ability to play in the FedExCup Playoffs in exchange for
27 accepting massive payments from LIV Golf. *Id.* Exs. 9, 22, 33. For example, a week before his
28 suspension, Plaintiff Matt Jones stated publicly “[y]ou’ve got to expect” that he would be banned

1 for committing to play in LIV events without a release. Goldberg Decl. Ex. 51. When asked
 2 following his suspension about the possibility of never playing again on the PGA TOUR, Jones
 3 stated, “I did come to this [LIV] series and this tournament with the understanding that [] could
 4 be the case.” *Id.* Ex. 55. Unsurprisingly, TRO Plaintiffs have not played in any of the TOUR’s
 5 last seven events and did not seek any mandatory injunction to do so. Levinson Decl. ¶ 98. To the
 6 extent this motion presents any “emergency,” it is one that TRO Plaintiffs chose to create.
 7 Notwithstanding the knowledge that he would be suspended and ineligible to participate in the
 8 FedExCup, Jones stated that he was “very happy with the decision [he] made,” and that he was
 9 “more than happy to play in this LIV Golf series for the rest of the year.” Goldberg Decl. Ex 55.

10 **F. TRO Plaintiffs Mischaracterize the Facts**

11 Unable to establish their claims based on any fair interpretation of admissible evidence,
 12 TRO Plaintiffs have resorted to mischaracterizing the record. The TOUR does not have the space
 13 to correct all of TRO Plaintiffs’ half-truths and falsehoods in this brief, and instead has created a
 14 separate chart identifying an exemplary set of them. *See* Goldberg Decl. Ex. 42. To cite a few
 15 examples: TRO Plaintiffs begin their motion on page 1 with an egregious mischaracterization of a
 16 comment they attribute to a “Tour representative,” presented in bold text. Mot. at 1. The comment
 17 was actually from Davis Love III, a hall-of-fame golfer. Love is *not* a TOUR official and did *not*
 18 say that the TOUR “hold[s] all the cards” or “[doesn’t] care what the courts say”; that would be
 19 absurd. He said that *golfers* hold all the cards, and that if a court ordered the TOUR to permit LIV
 20 golfers to play in TOUR events despite breaking the TOUR’s rules, other golfers might simply
 21 boycott those events, because they “respect the rules,” are “fed up,” and “don’t want those guys
 22 . . . coming and cherry-picking our tournaments.” Dkt. 2-8 at 276–77. His comments do not
 23 reveal some purported arrogance by the TOUR; rather, they demonstrate the disruption and
 24 damage to all rule-abiding PGA TOUR members that would ensue if TRO Plaintiffs get their
 25 way. Likewise, TRO Plaintiffs mischaracterize TOUR Commissioner Jay Monahan’s comment
 26 that LIV Golf is “an irrational threat.” Mot. at 3–4. He did *not* say that it is irrational to compete
 27 with the PGA TOUR. He said that LIV is an *irrational market actor*, “one not concerned with the
 28 return on investment or true growth of the game.” Dkt. 2-3 at 4. TRO Plaintiffs’ moving papers

1 are littered with similar mischaracterizations and half-truths. Goldberg Decl. Ex. 42.

2 III. ARGUMENT

3 A TRO is an “extraordinary remedy never awarded as of right.” *Garcia v. Google, Inc.*,
 4 786 F.3d 733, 740 (9th Cir. 2015) (en banc). TRO Plaintiffs bear “the heavy burden” of
 5 demonstrating: (1) they are likely to succeed on the merits, (2) they are likely to suffer irreparable
 6 harm in the absence of preliminary relief, (3) the balance of equities tip in their favor, and (4) an
 7 injunction is in the public interest. *Blankenship v. Newsom*, 477 F. Supp. 3d 1098, 1103 (N.D.
 8 Cal. 2020). A TRO is typically a procedure “for preserving the status quo.” *Sierra On-Line, Inc.*
 9 *v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). Mandatory injunctions, by
 10 contrast, go “well beyond” preserving the status quo and are “particularly disfavored.” *Stanley v.*
 11 *Univ. of S. Cal.*, 13 F.3d 1313, 1320 (9th Cir. 1994) (quoting *Anderson v. United States*, 612 F.2d
 12 1112, 1114 (9th Cir. 1979)). The Court must deny a mandatory injunction “unless the facts and
 13 law clearly favor the moving party.” *Anderson*, 612 F.2d at 1114. The status quo is the state of
 14 affairs at “the time the complaint was filed.” *Animal Legal Def. Fund v. U.S.D.A.*, 2017 WL
 15 2352009, at *3 (N.D. Cal. May 31, 2017). TRO Plaintiffs seek a mandatory injunction to compel
 16 the PGA TOUR to take affirmative action to allow them to play in the FedExCup, while
 17 continuing to breach the TOUR’s Regulations. They fail to meet the standard for issuing any
 18 TRO, let alone the “doubly demanding” standard required for mandatory injunctive relief.
 19 *Garcia*, 786 F.3d at 740.

20 A. TRO Plaintiffs Have Failed to Show They Are Likely to Suffer Irreparable Harm

21 “Irreparable harm is ‘harm for which there is no adequate legal remedy, such as an award
 22 for damages.’ For this reason, economic harm is not generally considered irreparable.” *E. Bay*
 23 *Sanctuary Covenant v. Biden*, 993 F.3d 640, 677 (9th Cir. 2021) (quoting *Arizona Dream Act*
 24 *Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014)). “[T]he temporary loss of income,
 25 ultimately to be recovered, does not usually constitute irreparable injury. . . . Mere injuries,
 26 however substantial, in terms of money, time and energy necessarily expended in the absence of a
 27 stay, are not enough.” *Sampson v. Murray*, 415 U.S. 61, 90 (1974). Additionally, irreparable harm
 28 must be “likely,” not just possible. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008).

1 **1. TRO Plaintiffs delayed seeking relief**

2 TRO Plaintiffs’ motion should be denied because “delay before seeking a preliminary
3 injunction implies a lack of urgency and irreparable harm.” *Oakland Trib., Inc. v. Chron. Pub.*
4 *Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985); *see also Garcia v. Google, Inc.*, 786 F.3d at 746
5 (“months” delay in seeking injunction undercut claim of irreparable harm); *Collins v. Nat’l*
6 *Football League*, 566 F. Supp. 3d 586, 603–04 (E.D. Tex. 2021) (two-week delay weighed
7 against finding of irreparable harm). TRO Plaintiffs knew about their suspensions but sat on their
8 purported claims for months. They were informed that their violations of the Regulations resulted
9 in their suspensions on June 9. Levinson Decl. Exs. 9, 22, 33. Even before being notified, they
10 expected to be suspended. Goldberg Decl. Ex. 51. And the citations in their hefty filings
11 demonstrate that they have spent months preparing this legal challenge. Dkt. 2-13 at p.15 n.31
12 (declaration stating that cited source was “accessed 6/9/2022”). Yet TRO Plaintiffs waited nearly
13 two months before seeking the “emergency” relief to which they now claim they are entitled.
14 TRO Plaintiffs’ delay weighs heavily against a finding of irreparable harm. *See* Rutter Group
15 *Prac. Guide Fed. Civ. Proc. Before Trial* (Nat Ed.) Ch. 13-D at ¶ 13:95 (“Delay in seeking relief
16 may be evidence of laches or negate the alleged threat of ‘immediate’ irreparable injury. The
17 court has discretion to deny the application on either ground.” (citations omitted)).

18 **2. TRO Plaintiffs’ claimed harm can be redressed through monetary remedies**

19 TRO Plaintiffs’ motion also should be denied because the only arguably concrete injuries
20 they claim are compensable by damages. They provide a list of five purported harms, but the first
21 three—lost opportunities (1) “to qualify for the 2023 Majors,” (2) “to accumulate points,” and (3)
22 “to qualify for other premier tournaments”—ultimately collapse into the final two—(4) lost
23 “income earning opportunities” and (5) “losses to goodwill, reputation, and brand.” Mot. at 22.
24 The tournaments and points are merely means to earn financial and reputational rewards. Even if
25 TRO Plaintiffs were actually suffering those purported harms, neither would justify extraordinary
26 relief they seek. Loss of income that could have been earned in future tournaments is entirely
27 compensable by monetary damages. And TRO Plaintiffs’ conclusory, tag-along allegations
28 regarding reputational harm are too remote and speculative to qualify as irreparable injury.

1 **First**, “monetary injury is not normally considered irreparable.” *hiQ Labs, Inc. v. LinkedIn*
2 *Corp.*, 31 F.4th 1180, 1188 (9th Cir. 2022). “The possibility that adequate compensatory or other
3 corrective relief will be available at a later date, in the ordinary course of litigation, weighs
4 heavily against a claim of irreparable harm.” *Sampson*, 415 U.S. at 90. “An injury is not
5 irreparable if it can be compensated by the court when, and if, the plaintiff prevails on the merits.
6 Stated differently, only harm that the district court cannot remedy following a final determination
7 on the merits may constitute irreparable harm.” *Qualcomm Inc. v. Compal Elecs., Inc.*, 283 F.
8 Supp. 3d 905, 915 (S.D. Cal. 2017) (internal quotation marks and citation omitted).

9 Here, TRO Plaintiffs expressly seek “monetary damages, treble damages, and economic
10 damages.” Compl. at 103. Although the TOUR has committed to pay TRO Plaintiffs for their
11 achievements through the dates of their suspensions, they now seek redress for their inability to
12 play for money in TOUR events postdating their breaches of contract and suspensions. TRO
13 Plaintiffs’ claims are fundamentally economic and may be redressed through monetary relief. In
14 *Heldman v. United States Lawn Tennis Ass’n*, 354 F. Supp. 1241, 1251 (S.D.N.Y. 1973), the
15 court denied injunctive relief for similar claims by an athlete, Billie Jean King, barred from events
16 in one league because of unauthorized participation in another. There, the athlete “saw a valuable
17 opportunity in plaintiff’s contract and opted for it; she has available to her the chance to win large
18 sums of prize money and with that the subsequent opportunities of endorsements that accrue to
19 athletic stars. That other tournament opportunities may be lost to her ... does not, on this record,
20 support a preliminary injunction.” *Id.* So too here, where TRO Plaintiffs claim that LIV offered
21 them *superior* compensation for foregoing TOUR opportunities, and LIV has indemnified them
22 for losses associated with their breaches of TOUR Regulations. Gooch Decl. ¶ 16 (“LIV Golf
23 offered to compensate me in amounts in addition to its already strong compensation offering—
24 including the highest purses in golf history and guaranteed compensation.”); Jones Decl. ¶ 16
25 (same); Swafford Decl. ¶ 16 (same); Khosla Decl. ¶ 23 (LIV has offered players “extensive
26 indemnification” “to take on the risk” of players’ TOUR punishments).

27 The fact that TRO Plaintiffs’ purported lost earnings would occur in the future and may be
28 “difficult to predict” because they are “based on performance” does not justify extraordinary

1 relief. Gooch Decl. ¶ 45; Jones Decl. ¶ 45; Swafford Decl. ¶ 45. Courts routinely award
 2 compensation for lost income, including projected future income. *United States v. Cienfuegos*,
 3 462 F.3d 1160, 1169 (9th Cir. 2006) (“concepts and analysis involved” in calculating future lost
 4 income “are well-developed in federal law”); *Mir v. Little Co. of Mary Hosp.*, 844 F.2d 646, 650
 5 (9th Cir. 1988) (“The mere fact that the extent of the injury may be uncertain would not have
 6 prevented recovery” because plaintiff “could have easily presented evidence of his projected lost
 7 income”). In fact, TRO Plaintiffs’ own economist concludes that golfers have calculated the costs
 8 associated with “the loss of expected lifetime playing revenues on the TOUR,” “the loss of
 9 opportunities to earn ranking points,” and the loss of opportunities “to earn entry into the Majors”
 10 when determining what “large upfront payments” would be “required” for them to join LIV.
 11 Leitzinger Decl. ¶ 9. TRO Plaintiffs’ assertion that lost earnings would be “difficult to quantify”
 12 ignores the fact that their own economist admits that these projected lost earnings have already
 13 been quantified—and paid. *See Braintree Lab’ys, Inc. v. Citigroup Glob. Mkts. Inc.*, 622 F.3d 36,
 14 42 (1st Cir. 2010) (finding no irreparable injury where plaintiff claimed “it might be difficult to
 15 determine retrospectively how much these missed opportunities were actually worth.”).

16 TRO Plaintiffs’ irreparable injury claims are easily distinguishable from cases where
 17 athletes were barred entirely from participation at the elite level of their sport. *See* Mot. at 22–23
 18 & n.10. TRO Plaintiffs are not barred from professional golf entirely by age restrictions, rights of
 19 first refusal, or some other improper mechanism.¹ *See Elite Rodeo Ass’n v. Prof. Rodeo Cowboys*
 20 *Ass’n, Inc.*, 159 F. Supp. 3d 738, 745 (N.D. Tex. 2016) (“In cases recognizing lost playing time
 21 alone as constituting irreparable harm, athletes were entirely locked out of their sports.”). TRO
 22 Plaintiffs themselves argue that they may still compete at an elite level at LIV Golf tournaments.

24 ¹ TRO Plaintiffs’ reliance on *Gilder v. PGA Tour, Inc.*, 936 F.2d 417, 423 (9th Cir.1991), also is
 25 misplaced. *Gilder* concerned the requirement that members use certain clubs while playing on the
 26 TOUR, not suspension from the TOUR itself. The court held that the marginal effect of using
 27 different clubs was an injury that could defy calculation. *Id.* The purported injury here is not so
 28 subtle, and damages could be calculated using established methodologies, as described above.

1 Mot. at 23 (“The only elite golf leagues in existence today are the Tour and LIV Golf.”). Their
2 choice to breach their agreements with the TOUR and join another “elite” golf league—one that
3 they claim has offered them superior compensation—is not an irreparable injury.

4 **Second**, to the extent TRO Plaintiffs purport to allege non-monetary harm, their
5 allegations are fatally speculative and conclusory. “Speculative injury does not constitute
6 irreparable injury sufficient to warrant granting a preliminary injunction.” *Caribbean Marine*
7 *Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988). “[A] plaintiff who attempts to establish
8 irreparable harm via loss of business reputation and goodwill must proffer evidence of that loss—
9 a district court may not base a finding of reputational harm on platitudes rather than evidence.”
10 *Amazing Ins., Inc. v. Dimanno*, 2019 WL 3406941, at *3 (E.D. Cal. July 26, 2019).

11 Here, TRO Plaintiffs’ boilerplate claims that they will suffer harms to their “goodwill,
12 reputation, and brand” do not even rise to the level of platitudes. *See* Gooch Decl. ¶ 44
13 (“Participating in the FedEx Cup would provide me opportunities to enhance my sponsor
14 relationships and compensation.”) & ¶ 46 (“To retaliate against me and to disparage me for living
15 out the purpose of the organization the PGA TOUR has harmed my reputation and goodwill.”);
16 Jones Decl. ¶¶ 44 & 46 (same); Swafford Decl. ¶¶ 44 & 46 (same). Moreover, those claimed
17 harms—to the extent they are even identifiable—are too remote and speculative to warrant
18 injunctive relief. *See Jessup v. Am. Kennel Club, Inc.*, 862 F. Supp. 1122, 1128 (S.D.N.Y. 1994)
19 (finding conclusory affidavits failed to establish irreparable injury to reputation). Any
20 reputational harms TRO Plaintiffs may suffer are far more likely to arise from their alignment
21 with LIV and its efforts to paper over Saudi Arabia’s long and well-documented history of human
22 rights abuses than their suspension from the TOUR for violating its rules.

23 **Third**, the true lack of exigency here is revealed by the actions of other Plaintiffs. Four
24 other Plaintiffs are similarly situated to the TRO Plaintiffs—they have qualified to play in the
25 FedExCup Playoffs but are suspended from TOUR events—but those four have not sought
26 emergency relief from the Court. Levinson Decl. ¶ 97. If suspension from the TOUR and the
27 consequences that flow from it were truly irreparable, one would expect uniform action by the
28 affected Plaintiffs. The fact that other Plaintiffs face the same purportedly dire consequences and

1 have not sought immediate relief underscores that their purported injuries are not irreparable.

2 **B. The Balance of Equities Tips Sharply in the PGA TOUR’s Favor**

3 Though TRO Plaintiffs have not shown that they are threatened with irreparable harm, the
4 TOUR and its members will be immediately and irreparably injured if this Court orders that TRO
5 Plaintiffs must play in the FedExCup despite their repeated violations of the Regulations.

6 The TOUR and its members will suffer irreparable harm if the TOUR cannot enforce its
7 Regulations and, by doing so, ensure the exclusive media rights those Regulations protect. *See*
8 *Heldman*, 354 F. Supp. at 1252 (“It would unduly damage the prestige and the operation of the
9 [incumbent tennis association] to enjoin its rules before an adverse determination on the merits.”).

10 If Plaintiffs are permitted to play for both the TOUR and LIV, the TOUR will be forced to
11 provide a platform for golfers who have denigrated the TOUR and devalued its product for all
12 TOUR members. Levinson Decl. ¶¶ 106–116; Israel Decl. ¶¶ 88–95, 101–104. [REDACTED]

13 [REDACTED]
14 [REDACTED]
15 [REDACTED] Peters Decl. Exs. 2–4. In other
16 words, the requested relief will allow LIV and its players to use the TOUR’s platform to attempt
17 to draw viewers, sponsors, and other golfers away from the TOUR, while simultaneously
18 allowing TRO Plaintiffs to flout their promise to adhere to the TOUR’s rules.

19 Moreover, the TOUR will suffer irreparable reputational damage if it is forced to give a
20 stage to players engaged with LIV and to associate the PGA TOUR brand with the Saudi
21 government’s efforts to “sportswash” its deplorable reputation. Goldberg Decl. Ex. 44. This fear
22 is well-founded, as LIV has already been a constant distraction at recent TOUR events. During a
23 June 8 press conference for the TOUR’s RBC Canadian Open, questions about LIV dominated;
24 half of the questions to reigning champion Rory McIlroy were about LIV rather than the
25 tournament. *Id.* Ex. 53. Similarly, at the recent 150th Open Championship, one of professional
26 golf’s most historic tournaments, prominent TOUR members expressed frustration with the
27 unwanted media focus on LIV rather than the tournament. As Justin Thomas explained, “I think
28 it’s very obvious why we’re sick of talking about it because . . . it’s taking away from a lot of –

1 whether it's great storylines or just great things happening in the game of golf." *Id.* Ex. 75.

2 The public outrage and political backlash aimed at golfers who have joined LIV reinforces
 3 the TOUR's concerns. After Pumpkin Ridge Golf Club (outside Portland, Oregon) announced
 4 that it would host a LIV tournament on July 1–3, eleven mayors in Washington County (where
 5 Pumpkin Ridge is located) signed an open letter opposing the tournament, numerous members of
 6 the club protested the decision, and an estimated forty club members resigned. *Id.* Ex. 64. U.S.
 7 Senator Ron Wyden, spoke out against the Oregon LIV event, citing a hit-and-run accident that
 8 killed an Oregon teen and how the Saudi-national defendant was shuttled out of the U.S. by the
 9 Saudi government before he could stand trial. *Id.* Ex. 66. In addition, several protesters, including
 10 members of 9/11 survivor families, gathered outside Pumpkin Ridge and again at the Trump
 11 resort in Bedminster, New Jersey, to protest LIV events. *Id.* Exs. 71, 81. The irreparable harm to
 12 the TOUR that would necessarily flow from forcing the TOUR to provide LIV golfers and their
 13 Saudi backers a greater platform weighs heavily against granting the requested relief.

14 **C. An Injunction Would Harm the Public Interest**

15 The Court also must "pay particular regard for the public consequences in employing the
 16 extraordinary remedy of injunction." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 867
 17 (9th Cir. 2017). A temporary restraining order would permit LIV and TRO Plaintiffs to unfairly
 18 reap the benefits of the TOUR's media and sponsorship rights, which are exclusive to TOUR
 19 members, and force the TOUR's partners and sponsors to be associated with LIV and its backers.
 20 Many of the TOUR's partners and sponsors have made independent decisions to have no
 21 relationship with LIV but would be forced into an affiliation with them. A preliminary injunction
 22 also will engender consumer confusion because players with dual, conflicting loyalties may
 23 promote LIV over the PGA TOUR while participating in TOUR events. Finally, as explained
 24 below, the TOUR's enforcement of its Regulations is not anticompetitive. Those Regulations are
 25 key to protect rule-abiding TOUR members and are procompetitive.

26 **D. The Law and Facts Do Not Clearly Favor TRO Plaintiffs on the Merits**

27 **1. TRO Plaintiffs lack antitrust standing**

28 Plaintiffs' antitrust claims under Section 1 and 2 fail at square one because Plaintiffs lack

1 antitrust standing. “A plaintiff may only pursue an antitrust action if it can show ‘antitrust injury,
2 which is to say injury of the type the antitrust laws were intended to prevent and that flows from
3 that which makes defendants’ acts unlawful.’” *Am. Ad. Mgmt., Inc. v. Gen. Tel. Co. of Cal.*, 190
4 F.3d 1051, 1055 (9th Cir. 1999) (quoting *Atl. Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328,
5 334 (1990)). Plaintiffs allege that the TOUR’s Regulations are anticompetitive, but the injury they
6 claim is exclusion from the benefits of a contract they knowingly breached, not the exclusion of
7 themselves or LIV from any relevant market. Compl. ¶¶ 7, 9, 11, 58–77. Having breached their
8 agreements with the TOUR and thrown their lot in with LIV, Plaintiffs have no “right to the
9 [TOUR] platform and the public exposure provided by playing on the Tour.” *Id.* ¶¶ 212, 215, 218.
10 Their purported “injury”—being denied the benefits of a contract they breached—is not the type
11 of injury “the antitrust laws were intended to prevent.” *Atl. Richfield*, 495 U.S. at 334. Moreover,
12 Plaintiffs’ antitrust claims are merely a stalking horse for claimed injury to LIV. Compl. ¶¶ 283–
13 286, 290–293, 297; Dkt. 3 (disclosure of LIV as interested entity). Plaintiffs (falsely) allege that
14 the TOUR is engaged in an “effort to exclude competition from LIV Golf,” Mot. at 9, but
15 Plaintiffs are not the “efficient enforcer” of any such claim and “therefore lack[] antitrust standing
16 on that basis as well,” *Gatt Commc’ns, Inc. v. PMC Assocs., L.L.C.*, 711 F.3d 68, 78–80 (2d Cir.
17 2013) (plaintiff that agreed to and then was excluded from alleged anticompetitive contract lacked
18 standing because it was not “efficient enforcer” of alleged antitrust violation).

19 **2. The law and facts do not clearly favor TRO Plaintiffs on their Section 2 claim**

20 **a. The TOUR lacks monopoly power**

21 Plaintiffs’ Section 2 claim fails because Plaintiffs cannot clearly show that the TOUR has
22 “the power to exclude competition or control prices.” *United States v. Syufy Enters.*, 903 F.2d
23 659, 664 (9th Cir. 1990). The “successful entry by LIV Golf” demonstrates that the TOUR lacks
24 the power to exclude competition. Mot. at 13. In just its first year, LIV has established a tour that
25 competes directly with the PGA TOUR, has more financial resources than the TOUR, and offers
26 more guaranteed money to players than the TOUR. Plaintiffs’ own economist states that LIV is
27 on track to go from 0% of the market in 2021 to 20% of the market in 2023, while filling its fields
28 with a greater percentage of elite golfers on average (24%) than the TOUR averages (16%).

1 Letizinger Decl. ¶¶ 33, 62–64; Goldberg Decl ¶ 49. LIV’s recruitment of Plaintiffs as part of a
2 full complement of 48 professional golfers and its “successful entry [into the market] itself refutes
3 any inference of the existence of monopoly power that might be drawn from [the TOUR’s]
4 market share.” *Tops Mkts., Inc. v. Quality Mkts., Inc.*, 142 F.3d 90, 99 (2d Cir. 1998); *see also*
5 *Syufy Enters.*, 903 F.2d at 665 (evidence that new competitor entered market and began taking
6 market share from defendant was “conclusive” proof of defendant’s lack of monopoly power);
7 *Elite Rodeo*, 159 F. Supp. 3d at 745 (denying injunctive relief where competitor’s “initial
8 success” entering market demonstrated that defendant “does not have the ability to exclude
9 competitors from the market”). Likewise, the fact that the TOUR responded to LIV’s entrance
10 into the market by increasing player pay refutes any argument that the TOUR has the power to
11 “control prices.” *Syufy Enters.*, 903 F.2d at 664.

12 **b. The TOUR’s Regulations do not restrict competition**

13 TRO Plaintiffs’ monopolization claim also falls short because the TOUR’s Regulations do
14 not “prevent PGA TOUR members from selling their services” to TOUR competitors like LIV.
15 Mot. at 14. Unlike “non-compete” clauses, the TOUR’s Regulations do *not* prohibit members
16 from playing on a competing tour. Levinson Decl. ¶¶ 101–103; Israel Decl. ¶ 51. Any TOUR
17 member is free to “sell[] their services” to LIV or any other TOUR competitor. Mot. at 14.
18 Indeed, players including Dustin Johnson, Sergio Garcia, and Graeme McDowell have resigned
19 from the TOUR in favor of doing so. Plaintiffs themselves have also already sold their services to
20 join LIV, only without resigning. What Plaintiffs cannot do, however, is enter into annual
21 agreements with the TOUR that grant the TOUR their media rights, breach those agreements by
22 granting conflicting media rights to LIV, and then force the TOUR to allow LIV to freeride off
23 the TOUR’s investment and goodwill by compelling the TOUR to allow Plaintiffs to play in both
24 TOUR and LIV events. The TOUR’s eligibility and media rights provisions are analogous to an
25 exclusive services contract. Israel Decl. ¶¶ 11, 50. Such agreements are common, including for
26 independent contractors. *Id.*; *see also Cogan v. Harford Mem’l Hosp.*, 843 F. Supp. 1013, 1018,
27 1020 (D. Md. 1994) (rejecting antitrust claims where defendant hospital terminated contract with
28 plaintiff independent contractor physician who operated a competing clinic because plaintiff “has

1 not been eliminated as a competitor in the market”). As Dr. Israel notes, Compass-Lexecon has
 2 exclusive relationships with independent contractor academics that prevent those academics from
 3 providing consulting services to different firms simultaneously. Israel Decl. ¶ 50. Such provisions
 4 are commonplace and procompetitive. *Id.*

5 Moreover, suspending Plaintiffs from the TOUR based on their breaches of the
 6 Regulations is perfectly legal: “businesses are free to choose the parties with whom they will
 7 deal, as well as the prices, terms, and conditions of that dealing.” *linkLine Commc’ns*, 555 U.S. at
 8 448. Plaintiffs’ theory of exclusionary conduct boils down to their claim that the TOUR has an
 9 antitrust duty to allow Plaintiffs to play in TOUR events, even while Plaintiffs are breaching their
 10 contracts and competing against the TOUR as agents and “equity owner[s]” of LIV. Mot. at 14–
 11 15; Khosla Decl. ¶ 8. But the antitrust laws do not require the TOUR “to aid competitors.”
 12 *Verizon Commc’ns Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398, 410–11 (2004);
 13 *see also FTC v. Qualcomm Inc.*, 969 F.3d 974, 994 (9th Cir. 2020).

14 **c. Any alleged harm to competition does not outweigh the procompetitive**
 15 **benefits of the TOUR’s eligibility and media rights Regulations**

16 TRO Plaintiffs also cannot show that any alleged anticompetitive harm outweighs the
 17 TOUR’s procompetitive justifications. *See Qualcomm*, 969 F.3d at 991. The TOUR’s Regulations
 18 are justified by several “legitimate business purpose[s].” *Universal Analytics, Inc. v. MacNeal-*
 19 *Schwendler Corp.*, 914 F.2d 1256, 1258 (9th Cir. 1990).

20 **First**, the TOUR’s eligibility and media rights Regulations promote competition between
 21 tours—including not only LIV, but tours based outside North America as well—because they are
 22 an exclusive dealing agreement between the TOUR and its members during the applicable season.
 23 In exchange for TOUR membership benefits, members agree not to play in competing events in
 24 North America. Courts routinely acknowledge the “well-recognized economic benefits to
 25 exclusive dealing arrangements, including the enhancement of interbrand competition.” *Omega*
 26 *Env’t, Inc. v. Gilbarco, Inc.*, 127 F.3d 1157, 1162 (9th Cir. 1997). “Exclusive dealing agreements
 27 are often entered into for entirely procompetitive reasons, and generally pose little threat to
 28 competition.” *PNY Techs., Inc. v. SanDisk Corp.*, 2014 WL 2987322, at *4 (N.D. Cal. July 2,
 2014) (citation omitted); *see Brown v. Hansen Publ’ns, Inc.*, 556 F.2d 969, 971 (9th Cir. 1977).

1 Here, as Dr. Israel explains, Plaintiffs’ limited exclusivity commitment to the TOUR increases
2 competition by requiring the TOUR and LIV to compete vigorously against one another to attract
3 and retain the top players, which is already occurring. Israel Decl. ¶¶ 53–63.

4 **Second**, the Regulations are procompetitive because they encourage TOUR members to
5 use their best efforts to support and promote the TOUR rather than competing tours. Without
6 those obligations, players with conflicting interests would be incentivized to promote LIV at the
7 expense of the TOUR, including by recruiting players for LIV while participating in TOUR
8 events and forgoing conflicting TOUR tournaments in favor of LIV events. Israel Decl. ¶¶ 13,
9 88–95; Peters Decl. Exs. 2–4. Courts frequently recognize as procompetitive exclusive contracts
10 that, like the Regulations here, are designed to encourage the best efforts and undivided
11 commitment of a venture’s participants. *See, e.g., E. Food Servs., Inc. v. Pontifical Cath. Univ.*
12 *Servs. Ass’n, Inc.*, 357 F.3d 1, 8 (1st Cir. 2004); *Roland Mach. Co. v. Dresser Indus., Inc.*, 749
13 F.2d 380, 395 (7th Cir. 1984); *Sulmeyer v. Coca Cola Co.*, 515 F.2d 835, 840 n.2 (5th Cir. 1975).

14 **Third**, Plaintiffs’ agreement to play exclusively in TOUR events in North America and to
15 grant the TOUR their exclusive media rights prevents LIV from freeriding on the TOUR’s
16 platform and reputation. “Eliminating free riders” is a well-recognized “procompetitive advantage
17 of alleged restraints on competition.” *N. Am. Soccer League, LLC v. U.S. Soccer Fed’n, Inc.*, 883
18 F.3d 32, 43 (2d Cir. 2018); *see, e.g., Rothery Storage & Van Co. v. Atlas Van Lines, Inc.*, 792
19 F.2d 210, 222–23 (D.C. Cir. 1986); *SCFC ILC, Inc. v. Visa USA, Inc.*, 36 F.3d 958, 969–70 (10th
20 Cir. 1994). The TOUR has invested heavily to grow the game of golf and generate interest in its
21 product. Levinson Decl. ¶¶ 2–25. If Plaintiffs, in breach of their agreements with the TOUR,
22 were permitted to play in TOUR and LIV events in North America, the TOUR would effectively
23 be subsidizing its competitor by allowing LIV and its players to freeride off the TOUR’s efforts
24 in the United States. Israel Decl. ¶¶ 88–107. LIV would be using the TOUR’s platform and hard-
25 earned reputation to promote LIV and its players at TOUR events. *Id.* The TOUR’s freeriding
26 concerns explain why it grants releases to players for certain events on tours based outside of
27 North America but withholds releases from players seeking to play in LIV events regardless of
28 location. Because the majority of LIV’s events are held in North America, they pose greater risk

1 to the TOUR’s investment in its platform and reputation. *Id.* ¶¶ 96–98. Such freeriding harms
 2 players and fans because it disincentivizes the TOUR from continuing to invest in its product,
 3 players, and platform and disincentivizes LIV from doing the same. *Id.*

4 **3. The law and facts do not clearly favor TRO Plaintiffs on their Section 1 claim**

5 TRO Plaintiffs’ jumble of conspiracy allegations fare no better than their Section 2 claim.
 6 TRO Plaintiffs assert the TOUR conspired with the DP World Tour either to boycott players who
 7 work with LIV or to boycott LIV itself. *See* Mot. at 19. Whatever claim they are making, neither
 8 is supported by anything other than counsel’s mischaracterization of selective news reports, third-
 9 party statements, and LIV press releases. *Compare* Brass Decl. Ex. 22 with Goldberg Decl. Ex.
 10 42. Even if Plaintiffs’ hearsay upon hearsay upon hearsay were sufficient, their Section 1 theory
 11 bears no relationship to the relief TRO Plaintiffs seek here. Nor could it. As a matter of law,
 12 Plaintiffs cannot allege a Section 1 claim based on the TOUR’s enforcement of its *own* eligibility
 13 and media rights Regulations. *Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752, 769 (1984)
 14 (“[I]t is perfectly plain that an internal ‘agreement’ to implement a single, unitary firm’s policies
 15 does not raise the antitrust dangers that § 1 was designed to police.”).

16 Plaintiffs’ conspiracy allegations fail for two other reasons. *First*, their boycott theory is
 17 “limited to cases involving horizontal agreements among *direct competitors*.” *Nova Designs, Inc.*
 18 *v. Scuba Retailers Ass’n*, 202 F.3d 1088, 1092 (9th Cir. 2000) (emphasis added). But Plaintiffs’
 19 own economist contends that the DP World Tour does *not* compete with the TOUR. Leitzinger
 20 Decl. ¶¶ 42–46. *Second*, to establish a Section 1 boycott claim, TRO Plaintiffs must show that the
 21 TOUR “possesses a dominant market position.” *Adaptive Power Sols., LLC v. Hughes Missile*
 22 *Sys. Co.*, 141 F.3d 947, 950 (9th Cir. 1998) (citation omitted). But LIV’s successful entry into the
 23 market is “conclusive” proof that that the TOUR does *not* have such power. *Syufy Enters.*, 903
 24 F.2d at 665; *Tops Mkts.*, 142 F.3d at 99. TRO Plaintiffs have not established that the law or the
 25 facts clearly favor them on their Section 1 claim.

26 **4. TRO Plaintiffs are not entitled to play in TOUR events pending their appeals**

27 Nor can TRO Plaintiffs prevail on their misguided argument that their suspensions must
 28 be “abated” while they appeal their intentional and ongoing violations of TOUR Regulations.

1 Mot. at 11–12. Nothing in the Regulations entitles TRO Plaintiffs to violate the rules repeatedly
2 and deliberately but continue to play in TOUR events to the detriment of all other rule-abiding
3 members, merely because they have lodged an appeal. On the contrary, Article VII.C of the
4 Regulations empowers the Commissioner to immediately suspend serial offenders like Plaintiffs,
5 and to maintain their suspensions until any appeal of an ensuing disciplinary action is concluded.
6 The Commissioner exercised that authority here with respect to all three TRO Plaintiffs—a fact
7 that they conveniently ignore in their pleadings. The Commissioner’s power to suspend serial
8 offenders goes to the heart of his duty to protect and promote the interests and reputations of the
9 TOUR and its members. And it would be rendered all but meaningless if players with nefarious
10 intent could override his decision by merely lodging appeals.

11 When private organizations establish regulations and disciplinary procedures for their
12 members, courts must defer to their judgment on how those procedures should operate and avoid
13 interfering with them. *See Scheire v. Int’l Show Car Ass’n (ISCA)*, 717 F.2d 464, 465 (9th Cir.
14 1983) (articulating “[t]he principle of judicial noninterference in internal disputes of voluntary
15 associations”); *Oakland Raiders v. Nat’l Football League*, 131 Cal. App. 4th 621, 645–46 (2005)
16 (warning that “judicial intervention in such disputes will have the undesired and unintended effect
17 of interfering with the [organization]’s autonomy in matters where the [organization] and its
18 commissioner have much greater competence and understanding than the courts”); Levinson
19 Decl. Ex. 6 at 95 (Commissioner has power to “interpret and apply” the Regulations).

20 TRO Plaintiffs invite the Court to ignore the deference that should be afforded to the
21 TOUR’s interpretation of its own rules, and to do so with no basis in either the rules or common
22 sense. Under Article VII.E, PGA TOUR members may stay enforcement of an Intermediate or
23 Major *penalty* while it is being appealed. But there is *no* corresponding stay pending appeal for
24 suspensions under Article VII.C resulting from a *probation* violation, as the plain language of the
25 Regulations makes clear. The *penalty* procedures described in Section A include a 14-day period
26 for notice and a 14-day period for member response, and expressly include a stay pending appeals
27 under Section E. By contrast, the *probation* procedures described in Section C contain no
28 reference to an appeal. Nor would such a procedure make any sense because the probation rule

1 exists to fill the gap while the disciplinary process runs its course, which may span several
2 months. TRO Plaintiffs’ interpretation—that repeat, willful, and ongoing violators of the rules can
3 override the Commissioner’s decision to immediately suspend them—would only invite abuse
4 and would eviscerate the Commissioner’s power to protect the TOUR and its members from
5 parties who are actively trying to harm them.

6 Moreover, the continuous and ongoing nature of TRO Plaintiffs’ violations presents a
7 second, independent reason why they are not entitled to play in TOUR events during their
8 appeals. Even for appeals of penalties under Section E, no stay applies to suspensions “from a
9 tournament then in progress or scheduled for the calendar week in which the alleged violation
10 occurred.” Levinson Decl. Ex. 6 at Art. VII.E.2. By these means, the Regulations afford a stay to
11 players who in good faith wish to contest a Penalty imposed for a discrete incident that occurred
12 in the past, but *not* to players who continue actively violating the Regulations during their
13 appeals. For this additional reason, TRO Plaintiffs are not entitled to stay their suspensions.

14 **5. TRO Plaintiffs’ “fair process” claim is meritless**

15 Finally, TRO Plaintiffs’ challenge to the TOUR’s disciplinary process gains no traction.
16 As TRO Plaintiffs concede, “fair process” claims apply only to organizations that are “tinged with
17 public purpose.” Mot. at 20 (quoting *McCune v. Wilson*, 237 So. 2d 169, 173 (Fla. 1970) (internal
18 ellipses omitted)). But “the right to fair procedure is a limited one that applies to an organization
19 that operates in the public interest—and not one that engages in activity of some interest to the
20 public.” *Flaa v. Hollywood Foreign Press Ass’n*, 2020 WL 8256191, at *4 (C.D. Cal. Nov. 20,
21 2020). Fair process claims have “not been applied in the field of entertainment.” *See id.* (press
22 association); *Yari v. Producers Guild of Am., Inc.*, 161 Cal. App. 4th 172, 180 (2008) (film
23 producers’ association). TRO Plaintiffs’ lone case on this point, *McCune v. Wilson*, 237 So. 2d
24 169, 173 (Fla. 1970), is easily distinguishable because it involved a “quasi-public organization.”
25 Nor can TRO Plaintiffs establish that the TOUR has “monopolistic control” in any relevant
26 market, as demonstrated by the emergence of LIV and the existence of other competitors. Section
27 III.D.2, *supra*. Thus, Plaintiffs’ fair process claim fails as a matter of law.

28 Even if TRO Plaintiffs’ fair process claim applied to the TOUR’s private disciplinary

1 procedures, it would not support any request for extraordinary injunctive relief. There is no “rigid
2 procedure that must invariably be observed” to provide “fair procedure.” *Ezekial v. Winkley*, 20
3 Cal. 3d 267, 278 (1977). All that is required is “adequate notice of the ‘charges’” and a
4 “reasonable opportunity to respond.” *Id.* (citing *Pinsker v. Pac. Coast Soc’y of Orthodontists*, 12
5 Cal. 3d 541, 555 (1974)). The TOUR’s disciplinary process easily meets this test. It is undisputed
6 that the TRO Plaintiffs received adequate notice of the charges and have had a reasonable
7 opportunity to respond. Levinson Decl. ¶¶ 26–99. Nothing more is required.

8 TRO Plaintiffs complain that the TOUR’s Appeals Committee fails to provide “impartial
9 review.” Mot. at 21. But the Appeals Committee, which has not yet made any determinations, is
10 comprised of independent non-player members of the TOUR Policy Board and “may affirm,
11 modify (increase or decrease), or reverse the decision of the Commissioner.” Levinson Decl. Ex.
12 17. TRO Plaintiffs have not and cannot explain how they would suffer irreparable injury by
13 allowing their appeals to play out. TRO Plaintiffs also suggest that the Commissioner is
14 supposedly “bias[ed]” against them. Mot. at 21. That’s false. But regardless, the Commissioner
15 has referred their appeals to the Appeals Committee, a separate body, for review. Levinson Decl.
16 ¶¶ 55, 75, 94 & Exs. 17, 29, 40. Finally, TRO Plaintiffs’ allegations about other supposed minor
17 flaws in TOUR processes, Mot. at 21, are belied by the facts. Mr. Gooch *was* timely provided
18 notice; the TOUR *did* send disciplinary notice letters to each TRO Plaintiff; and, as discussed
19 above, the TOUR was under no obligation to “abate” TRO Plaintiffs’ suspensions for their
20 ongoing violations. Levinson Decl. ¶¶ 36–99. Regardless, none of these complaints change the
21 ultimate fact that the TOUR’s Regulations provide a “fair procedure,” which TRO Plaintiffs
22 continue to avail themselves of to this day. *Pinsker*, 12 Cal. 3d at 555.

23 IV. CONCLUSION

24 For the foregoing reasons, the PGA TOUR respectfully requests that the Court deny TRO
25 Plaintiffs’ motion for a temporary restraining order.
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