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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

L ALD LLC, a Florida Limited Liability Company,

Plaintiff,

v.

REBEKAH M. GRAY, an individual;
MERLIN PUBLISHING LLC, a Texas Limited Liability Company d/b/a MERLIN’S PEN PUBLISHING;
GATEKEEPER PRESS, a Florida Limited Liability Company; INGRAM INDUSTRIES INC., a Tennessee corporation d/b/a INGRAM CONTENT GROUP and/or LIGHTNING SOURCE;
HATCHETTE BOOK GROUP, a New York corporation; and DOES 1-50, inclusive,

Defendants.

Case No.: 24-CV-02195-GPC-MSB

ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION

[ECF No. 3]

Before the Court is a motion for preliminary injunction filed by Plaintiff L ALD LLC (“Plaintiff”) against Defendants Rebekah M. Gray, Merlin Publishing LLC, d/b/a

1 Merlin’s Pen Publishing; Gatekeeper Press; Ingram Industries Inc., d/b/a Ingram Content
2 Group and/or Lightning Source; Hatchette Book Group, collectively “Defendants.” ECF
3 No. 3 (“Mot.”). The motion has been fully briefed. Defendants filed an opposition on
4 December 13, 2024. ECF No. 9. Plaintiff filed a reply on December 23, 2024. ECF No.
5 17. The Court finds the matter suitable for determination on the papers without a hearing.

6 Based upon a review of the briefs, the supporting documentation, the applicable
7 law, and for the foregoing reasons, the Court hereby **DENIES** Plaintiff’s motion for
8 preliminary injunction.

9 **BACKGROUND**

10 This is a copyright infringement controversy involving several works of young
11 adult fiction. Without making any findings as to the truth of the allegations, the Court
12 details the parties’ claimed factual events below.

13 Rebekah Gray is an author who writes YA fiction under the pen name RM Gray.
14 She began writing *Nightweaver* in 2020 and self-published it in October 2023. Response
15 at 3. It was recently picked up by Hatchette, one of the largest publishing companies in
16 the United States, and is scheduled to be published in a deluxe limited edition in March
17 2025, having been available for preorder since July 2024. *Id.* at 3, 4. *Nightweaver* is
18 meant to be the first novel of a three-book series written by Gray and published by
19 Hatchette, and Gray is under contract to deliver to Hatchette, by January 2025, the second
20 book, which is then expected to be published nine months after the deluxe limited edition
21 of *Nightweaver*. *Id.*

22 According to Gray, she began writing *Nightweaver* in January 2020, and
23 completed a substantial draft of the novel by October 2020 – more than one year before
24 Plaintiff claims it wrote the opening chapters of its first book. Gray Decl. ¶¶ 12, 14. This
25 October 2020 version already contained many of the allegedly infringing elements.
26 Response at 4. Gray then sent a complete manuscript to her editor on June 13, 2022,
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1 before Plaintiff’s first book was finished and before any part of the second book had been
2 written. *See* Compl. ¶ 38. This June 2022 manuscript contained all of the allegedly
3 infringing elements. Response at 4. Gray maintains that throughout this process, before
4 she received a cease-and-desist letter, she had never heard of the Aldrich sisters, their
5 pseudonym “Liz Ald,” or any of their books. Gray Decl. ¶¶ 27-30.

6 Under the pseudonym “Liz Ald,” sisters Lesley and Lindsey Aldrich write young
7 adult (“YA”) novels. They have authored a three-novel series, the first two of which are
8 at issue here: *The Boy with the Beautiful Name* (“Book 1”) and *The Boy with the*
9 *Beautiful Soul* (“Book 2”). Mot. at 2.

10 According to Plaintiff, a portion of Book 1 was first posted on the website Wattpad
11 on January 8, 2022. Compl. ¶¶ 18, 38. Wattpad is an “interactive web-novel platform,”
12 where authors can publish their content. Mot. at 3. Plaintiff then posted multiple
13 chapters each month on Wattpad, with the entire book posted to the website by July 2022.
14 Compl. ¶ 38. A portion of Book 2 was first posted to Wattpad on August 5, 2022, and
15 the entire book was posted on Wattpad by March 2023. Compl. ¶ 38.

16 On February 5, 2024, Lesley Aldrich obtained registered copyrights for both books
17 and then transferred the interests in these copyrights to L ALD LLC, the entity that she
18 owns with her sister. Compl. ¶ 22.

19 At some point in time, Lesley Aldrich states that she noticed similarities between
20 *Nightweaver* and Book 1 and Book 2, including plot, character, and setting similarities.
21 Mot. at 4-5. On March 20, 2024, then-counsel for Plaintiff sent a cease-and-desist letter
22 to Gray and Gatekeeper Press, LLC, among others, asserting copyright infringement.
23 Mot. at 7. This letter was sent five months after *Nightweaver* was first published. Gray’s
24 counsel responded to the letter, stating that Plaintiff’s allegations were “without legal and
25 evidentiary support” and that Gray would continue to sell and distribute *Nightweaver*.
26 Aldrich Decl., Ex. 9 at 3-4. On April 10, 2024, Gray’s counsel forwarded to Plaintiff the
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1 June 2022 email in which Gray submitted a complete manuscript of *Nightweaver* to her
2 editor. Declaration of Alyssa M. LaCourse (“LaCourse Decl.”). Plaintiff’s then-counsel
3 acknowledged recipient, but then neither Plaintiff nor counsel communicated with Gray
4 again. *Id.* ¶ 6.

5 After reviewing the provided email attachment and Word document that Gray’s
6 counsel had sent over, Lesley and Lindsey Aldrich allege that they discovered
7 peculiarities from the metadata of the manuscript. Mot. at 7. Lesley Aldrich asserts that
8 the properties of the Word document revealed: “(1) its timed stamped creation time
9 occurred after the email to which it was attached to was sent; and (2) this 100,000-word
10 document showed that in its lifetime the document had only 2 revisions and a total
11 editing time of 2 minutes.” *Id.* From this, Lesley and Lindsey Aldrich believed that Gray
12 had manipulated the Word document manuscript to make it appear like its creation pre-
13 dated Plaintiff’s works. *Id.*

14 On November 25, 2024, Plaintiff moved for preliminary injunction to enjoin
15 Defendants “from offering for sale on any medium the novel titled *Nightweaver* by RM
16 Gray.” This motion is before the Court now.

17 LEGAL STANDARD

18 “A preliminary injunction is an extraordinary remedy never awarded as of right.”
19 *Winter v. Natural Resources Def. Council*, 555 U.S. 7, 24 (2008) (citation omitted).
20 Courts “must balance the competing claims of injury and must consider the effect on each
21 party of the granting or withholding of the requested relief.” *Id.* (citation omitted). As
22 such, the “grant of a preliminary injunction is a matter committed to the discretion of the
23 trial judge[.]” *Evans v. Shoshone–Bannock Land Use Policy Comm'n*, 736 F.3d 1298,
24 1307 (9th Cir. 2013) (citation omitted). “In exercising their sound discretion,” district
25 courts “should pay particular regard for the public consequences in employing the
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1 extraordinary remedy of injunction.” *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312
2 (1982).

3 District courts exercise this discretion according to a four-factor test rooted in well-
4 established principles of equity. *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391
5 (2006). The moving party must show: (1) a likelihood of success on the merits; (2) a
6 likelihood of irreparable harm to the moving party in the absence of preliminary relief;
7 (3) that the balance of equities tips in the moving party's favor; and (4) that an injunction
8 is in the public interest. *Winter*, 555 U.S. at 20.

9 Under the Ninth Circuit's “sliding scale” approach, “the elements of the
10 preliminary injunction test are balanced, so that a stronger showing of one element may
11 offset a weaker showing of another.” *Pimentel v. Dreyfus*, 670 F.3d 1096, 1105 (9th Cir.
12 2012) (citing *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011)).
13 That being so, all four elements must be satisfied. *hiQ Labs, Inc. v. LinkedIn Corp.*, 31
14 F.4th 1180 (9th Cir. 2022). The moving party carries the burden to meet the four *Winter*
15 prongs. *All. for the Wild Rockies*, 632 F.3d at 1135.

16 DISCUSSION

17 As a threshold matter, the Court finds that the Plaintiff seeks a prohibitory rather
18 than mandatory injunction. A preliminary injunction can either be *prohibitory*,
19 prohibiting a party from taking action and preserving the status quo pending a
20 determination of the action on the merits, or *mandatory*, ordering a responsible party to
21 take action. *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873,
22 878–79 (9th Cir. 2009) (internal quotation marks and citations omitted). A mandatory
23 injunction is “particularly disfavored.” *Garcia v. Google*, 786 F.3d 733, 740 (9th Cir.
24 2015) (en banc) (quoting *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1320 (9th Cir. 1994
25 (internal citations omitted)). Defendants contend that Plaintiff is seeking a mandatory
26 injunction. Opp. at 11. A district court should deny a mandatory injunction, “unless the
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1 facts and law clearly favor the moving party.” *Park Vill. Apartment Tenants Ass'n v.*
2 *Mortimer Howard Trust*, 636 F.3d 1150, 1161 (9th Cir. 2011).

3 Put simply, prohibitory injunctions preserve the status quo and mandatory
4 injunctions “go[] well beyond simply maintaining the status quo.” *Anderson v. United*
5 *States*, 612 F.2d 1112, 1114 (9th Cir. 1980). However, the distinguishing line between
6 prohibitory injunctions and mandatory injunctions is not always so clear. *Compare* 42
7 *Am. Jurisprudence 2d Injunctions* § 5 (2017) (“An injunction is considered prohibitory
8 when the thing complained of results from present and continuing affirmative acts and
9 the injunction merely orders the defendant to *refrain from doing those acts.*”) (emphasis
10 added) *with* 42 *Am. Jurisprudence 2d Injunctions* § 6 (2017) (“The person named in a
11 mandatory injunction must undo the wrong or injury with which he or she is charged.
12 This may involve, for example, the undoing of illegal acts or *restraining the performance*
13 *of an act.*”) (emphasis added).

14 The status quo “refers not simply to any situation before the filing of a lawsuit but
15 instead to the last uncontested status which preceded the pending controversy.”
16 *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000) (citations and
17 internal quotations omitted); *see O Centro Espirita Beneficiente Uniao Do Vegetal v.*
18 *Ashcroft*, 389 F.3d 973, 1013 (10th Cir. 2004), *aff'd*, 546 U.S. 418 (2006) (McConnell, J.,
19 concurring in part and dissenting in part) (“Status quo does not mean the situation
20 existing at the moment the law suit is filed, but the last peaceable uncontested status
21 existing between the parties before the dispute developed.”) (internal quotation marks
22 omitted).

23 Here, Plaintiff seeks a preliminary injunction that would enjoin Defendants “from
24 offering for sale on any medium the novel titled *Nightweaver* by RM Gray.” Mot. at 1.
25 This is a prohibitory injunction. The “status quo” was the state of things *before* the
26 allegedly infringing novel, *Nightweaver*, was being sold. This was the last peaceable
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1 situation between the parties before any dispute developed. Since Plaintiff seeks a return
2 to this status quo, this is a prohibitory injunction. Plaintiff does not seek any affirmative
3 action that would go beyond the status quo.

4 In *Garcia*, the court concluded that the requested injunction was mandatory
5 because it found that Garcia’s “requested injunction required Google to take affirmative
6 action – to remove (and to keep removing) [the allegedly infringing video] from
7 YouTube”; in essence, it ordered a “responsible party to take action.” *Id.* (citation and
8 internal quotations omitted). *Garcia* is distinguishable because the determination of
9 mandatory injunction rested primarily on its finding that Google was enjoined to take
10 *affirmative* action. Plaintiff, here, is not seeking to affirmatively take down copies of
11 *Nightweaver* from the shelves of bookstores. It only wants to halt future sales of the
12 novel.

13 Defendant relies on another case, *Wild v. HarperCollins Publishers LLC*, in which
14 the court determined the injunction was mandatory based on the fact that Defendants
15 would have to “cease production or even recall books.” 2013 WL 12137684, at *3 (C.D.
16 Cal. Jan. 2, 2013). The court cited to *Signeo USA, LLC v. SOL Republic, Inc.*, in which
17 that court said, “To the extent [Plaintiff] seeks a *return* of products already shipped to
18 [Defendant’s] distributors and others, it is a mandatory injunction...” 2012 WL 2050412,
19 at *11 (N.D. Cal. June 6, 2012) (emphasis added). Again, Plaintiff is not seeking a return
20 or recall of *Nightweaver* copies that are already in circulation. *Compare BBK Tobacco &*
21 *Foods, LLP v. AIMS Group USA Corp.*, 2024 WL 5078126 (D. Nev. Nov. 25, 2024), at
22 *11 (granting a prohibitory injunction that prohibited defendant from “continuing to
23 infringe” on plaintiff’s intellectual property by using infringing names in commerce) *with*
24 *id.* at *12 (granting a mandatory injunction that ordered the defendant to “recall and
25 destroy all products... that infringe”).

1 More persuasive is the Ninth Circuit’s logic in *GoTo.com, Inc. v. Walt Disney Co.*
2 Disney was accused of using a logo that was substantially similar to a trademarked logo,
3 so the district court enjoined Disney from using the logo. On appeal, Disney argued that
4 the injunction was a change in the status quo, and therefore a mandatory injunction, but
5 the Ninth Circuit said that the status quo existed *before* Disney began using its allegedly
6 infringing logo and to hold otherwise would “lead to absurd situations, in which plaintiffs
7 could never bring suit once infringing conduct had begun.” *GoTo.com*, 202 F.3d at 1210.
8 Here, the Court finds that a request to enjoin publication of *Nightweaver* would be a
9 return to the “status quo” and thus prohibitory rather than mandatory. As such, the Court
10 will review the Plaintiff’s motion as one seeking a prohibitory injunction.

11 **I. Likelihood of success on the merits**

12 “The first factor under *Winter* is the most important—likely success on the merits.”
13 *Garcia*, 786 F.3d at 740 (citation omitted). To establish a copyright infringement claim,
14 a plaintiff must prove (1) ownership of the allegedly infringed work; and (2) that the
15 defendant infringed protected aspects of the plaintiff’s work. *Skidmore as Tr. for Randy*
16 *Craig Wolfe Tr. v. Led Zeppelin*, 952 F.3d 1051, 1064 (9th Cir. 2020). The second prong
17 is at issue here, and it requires a plaintiff to show (1) “copying” and (2) “unlawful
18 appropriation.” *Id.* The Court finds that Plaintiff cannot meet either element.

19 **A. “Copying” element**

20 Copying can be proven circumstantially, “by showing that the defendant had
21 access to the plaintiff’s work and that the two works share similarities probative of
22 copying.” *Skidmore*, 952 F.3d at 1064. The Court takes each element in turn.

23 **1. Access**

24 “To prove access, a plaintiff must show a reasonable probability, not a mere
25 possibility, that an alleged infringer had the chance to view the protected work.” *Art*
26 *Attacks Ink, LLC v. MGA Entm’t Inc.*, 581 F.3d 1138, 1143 (9th Cir. 2009). Where, as is
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1 here, there is no direct evidence of access, “circumstantial evidence can be used to prove
2 access either by (1) establishing a chain of events linking the plaintiff’s work and the
3 defendant’s access, or (2) showing that the plaintiff’s work has been widely
4 disseminated.” *Id.*

5 Plaintiff argues that access is established because of the “widely disseminated”
6 nature of Plaintiff’s books, Book 1 and Book 2, on the website Wattpad. Mot. at 12.
7 Plaintiff asserts that Wattpad is a “leading web-novel platform, home to a community
8 spending 26+ billion minutes per month engaged in Wattpad-contributor original stories
9 and other content and has over 650 million authored works on its site, with estimated web
10 traffic in excess of 100 million visits per month.” *Id.* Plaintiff also asserts that a simple
11 Google search of Liz Ald’s book titles will provide any inquirer with the links to the
12 books, free of charge. *Id.* Because of its general availability on the internet, and
13 specifically on the popular website Wattpad, Plaintiff argues that Defendant Gray had
14 access to the works.

15 This reasoning falls short. While Plaintiff touts Wattpad’s popularity as proof that
16 Plaintiff’s works were widely disseminated, there are two issues with this.

17 First, Plaintiffs have not convinced the Court that Plaintiff’s works *themselves*
18 were widely disseminated. While Wattpad, *on aggregate*, is popular and has a lot of web
19 traffic, Plaintiff must prove that Book 1 and Book 2 were widely read and disseminated.
20 Lesley Aldrich, in her declaration, does not state how popular Plaintiff’s works became.
21 *See Aldrich Decl.* ¶ 50. She states that Wattpad rewards authors whose novels “perform
22 well (measured as 1 Million+ readers)” but does not state whether Book 1 and Book 2
23 ever got near that mark. Instead, at some point, she pulled her works from Wattpad,
24 “thus ending [her] potential publishing opportunities on the site.” *Id.*

25 Plaintiff does, in its Complaint, alleges a few specific facts about the popularity of
26 Liz Ald’s works: that “Liz Ald’s works ranked #1 on Wattpad in its ‘Fiction’ section for
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1 approximately 12 weeks and Liz Ald’s works were frequently featured on Wattpad’s
2 homepage,” Compl. ¶ 33, and that Liz Ald had “1 million+ views for its 3-book YA
3 series,” *id.* ¶ 37.

4 There are several problems with this. There is no “Fiction” section on Wattpad.¹
5 Instead, there are specific genres listed, including “Romance,” “Adventure,” “Fantasy,”
6 and “Teen Fiction.” It’s unclear in *which* genre Plaintiff’s works were actually ranked
7 #1. Furthermore, in addition to genre categories, there is something called a “tag” on
8 Wattpad. A “tag” is a sub-categorical label within a genre. For example, within the
9 genre of “Teen Fiction,” there is a tag called “fiction.” From the Court’s review of the
10 Wattpad website, the genre “Teen Fiction” has a “Hot List” (top trending list) of about
11 1,200 stories overall, with a numerical ranking starting with the #1 story.² When the tag
12 “fiction” is added to filter the stories, then only 336 stories are listed – and a new #1 story
13 is shown. This means that this story is #1 within the genre of “Teen Fiction” *plus* the
14 added “fiction” tag. Thus, regardless of whatever genre Plaintiff’s works were in, if
15 Plaintiff’s works were ranked #1 when the “fiction” tag was toggled on, then the fact that
16 Liz Ald’s works reached #1 ranking seems less significant, since the “fiction” tag
17 generates a smaller pool of stories. Wattpad authors can calibrate and manipulate the
18 tags they add to their stories in order gain a higher ranking.³ Again, Plaintiff has not
19 made it clear what ranking #1 in the “‘Fiction’ section” actually means. But if it refers to
20 the “fiction” tag within a specific genre, then the #1 ranking seems less impressive as a
21 mark of wide dissemination.

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23 ¹ See www.wattpad.com, under the tab “Browse.”

24 ² See *Wattpad*, “Teen Fiction Stories,” <https://www.wattpad.com/stories/teenfiction>.

25 ³ “A more frequently used tag will have more stories to compete with, sometimes in the
26 thousands to millions, meaning it’s much easier to gain a ranking in a tag that has fewer
27 overall stories attached to it.” *Wattpad*, “Story rankings FAQ,”
<https://support.wattpad.com/hc/en-us/articles/360000769623-Story-rankings-FAQ>.

1 Even more problematically, Plaintiff does not allege *which* of Liz Ald’s works
2 ranked #1 on Wattpad’s supposed “Fiction” section and which were featured on the
3 homepage. Liz Ald has published at least one other work on Wattpad besides Book 1 and
4 Book 2. *See* Compl. ¶ 26 (Liz Ald “first began using the internet website wattpad.com...
5 in or around July 25, 2020, publishing a different fantasy novel than at issue in this
6 case”). The Complaint is silent about *which* book of Liz Ald – either Book 1, Book 2, the
7 first fantasy novel published on Wattpad, or another Liz Ald book altogether – was
8 ranked #1 or featured on the homepage. This is a key detail, because if a Liz Ald book
9 other than Book 1 or Book 2 was ranked #1, then this alleged #1 ranking is irrelevant to
10 this case: the “widespread dissemination” analysis is not about whether Liz Ald has
11 demonstrated success in *other* works, or *in general*, but rather if the specific works at
12 issue were widely disseminated. That being said, even if the #1 ranking book was Book
13 1, this still does not provide strong support for the access prong, because most of the
14 alleged similarities with *Nightweaver* come from Book 2. *See* Aldrich Decl. Exs. 4, 5, 6.
15 Plaintiff’s lack of disaggregation between its books frustrates the analysis here.

16 Next, Plaintiff’s assertion that Liz Ald had “1 million+ views for its 3-book YA
17 series” is unclear because Plaintiff never fully published the entirety of *The Boy with the*
18 *Beautiful Heart* (“Book 3”) on Wattpad. *See* Compl. at 13-14. In another part of the
19 Complaint, Plaintiff states that Liz Ald got “significant exposure for its works *in general*
20 while on the site, with an estimate of over 1 million views of *Liz Ald-created material*.”
21 *Id.* ¶ 33 (emphases added). “Liz Ald-created material” could encompass more than just
22 Book 1 and Book 2, including the first fantasy novel that it posted on Wattpad, in
23 addition to possible others. In any case, even if Plaintiff meant that there were 1 million+
24 views from between just Book 1 and Book 2, it runs into the same problem addressed
25 above: Plaintiff does not provide the allocation of those views between Book 1 or Book
26 2. If Book 1 received a significant majority of the reader views, then this weakens the
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1 contention that Book 2, from which most of the alleged similarities derive, was widely
2 disseminated. *See* Aldrich Decl. Exs. 4, 5, 6. Finally, the number of views may not be a
3 good metric of widespread dissemination. Wattpad distinguishes between what it calls
4 “Total Reads” (“the broadest measure of interest in [one’s] story”) and “Unique Readers”
5 (“number of unique daily viewers”).⁴ There could be devoted fans who re-read parts of
6 the works several times, and this all counts towards the “views” that the work has; the
7 total number of views therefore does not necessarily speak to widespread dissemination,
8 since it can be inflated if a small, but dedicated, fanbase frequently engage with the work.

9 Second, and relatedly, the expansive, popular nature of Wattpad can actually
10 undermine the proposition that Plaintiff’s works are widely disseminated. If there are
11 indeed “over 650 million authored works on its site,” Mot. at 12, it would be difficult to
12 say that Plaintiff’s works got much traction in a such a competitive, inflated internet
13 environment. The greater the number of works available on Wattpad, the likelier that
14 Plaintiff’s works did not cut through and reach a level of prominence and dissemination.
15 It’s not enough that the *platform* (Wattpad) is widely used. Plaintiff’s *works* have to be
16 widely disseminated. As addressed above, there is no strong evidence that this was the
17 case.

18 As to Plaintiff’s argument that a “simple ‘Google’ search” would pull up Plaintiff’s
19 works, Mot. at 12, this assumes that anything *searchable* on the internet should be
20 considered “widely disseminated.” This position would make the “access” prong nearly
21 meaningless, because almost anything can be found on the internet. The court in
22 *Skidmore* recognized that the concept of access has been diluted through modern
23 technology where “[g]iven the ubiquity of ways to access media online, from YouTube to
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25 ⁴ *See* Wattpad, “Story Statistics FAQ,” [https://support.wattpad.com/hc/en-](https://support.wattpad.com/hc/en-us/articles/4437003467924-Story-Statistics-FAQ)
26 [us/articles/4437003467924-Story-Statistics-FAQ](https://support.wattpad.com/hc/en-us/articles/4437003467924-Story-Statistics-FAQ) (detailing the difference between “Total
27 Reads” and “Unique Readers”).

1 subscription services like Netflix and Spotify, access may be established by a trivial
2 showing that the work is available on demand”. *Skidmore*, 952 F.3d at 068; *see also Lois*
3 *v. Levin*, 2022 WL 4351968, at *3-4 (C.D. Cal. Sept. 16, 2022) (“Courts within this
4 [Ninth] Circuit and our sister Circuits have consistently held that the mere availability of
5 a work online is insufficient to establish wide dissemination.”) (collecting cases). Here,
6 there is no other indication that, besides simply being part of the Internet, Plaintiff’s
7 works reached a level of prominence and popularity to be considered widely
8 disseminated. *Cf. Gray v. Perry*, 2020 WL 1275221, at *13 (C.D. Cal. Mar. 16, 2020)
9 (plaintiff presented evidence that the song at issue was played more than 6 million times,
10 was nominated for a Grammy, was performed at hundreds of concerts, and was ranked
11 highly on the Billboard charts for popular music).

12 Even more fatal to Plaintiff’s argument is the issue of timing: Defendant Gray
13 could not have had access to Plaintiff’s works if Gray had already finished much of her
14 work on *Nightweaver* before Plaintiff posted her material on Wattpad. Gray asserts that
15 she effectively completed *Nightweaver* before Plaintiff began posting the works online.
16 Response at 15. Gray declares that she started writing the book in January 2020, finished
17 a partial draft in October 2020, and then sent a complete manuscript to her editor in June
18 2022. *See Gray Decl.* ¶¶ 12, 14. Meanwhile, Plaintiff started to post chapters of Book 1
19 in January 2022 and posted chapters intermittently until July 2022. *Compl.* ¶ 38. As to
20 Book 2, Plaintiff did not even begin to post chapters until August 2022, which was
21 months after Gray had completed her *Nightweaver* manuscript and sent it to her editor.⁵
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25 ⁵ As discussed, this is particularly significant given that Defendants claim that all of the
26 alleged plotline similarities are from Book 2, *see Aldrich Decl. Ex. 5*, and that the vast
27 majority of other similarities are also taken from Book 2, *see Aldrich Decl. Exs. 4, 6*. To
28 the extent that the timeline presented by Defendants is accurate, then Plaintiff has a

1 Gray Decl. ¶ 16. Many of the allegedly infringing elements were present in the October
2 2020 partial draft and all were present in the complete June 2022 manuscript. Gray Decl.
3 ¶¶ 14, 16.

4 In turn, Plaintiff argues that Gray manipulated the manuscript “to make it appear
5 like its creation pre-dated the Liz Ald works.” Compl. ¶ 62. Defendants argue that this is
6 merely speculation that is contradicted by the forensic evidence performed by their
7 expert, who confirmed the each of the time-stamps of Gray’s works. Mueller Decl. ¶¶
8 14-16. Plaintiff disputes the expert’s review, stating that the “files” that the expert
9 examined “are not the actual attachments from Defendant Gray’s emails.” Reply at 1. It
10 is unclear how Plaintiff has come to this conclusion. In the expert’s declaration, he
11 clearly states that “[t]he three (3) emails and their respective three (3) *attachments* are a
12 true copy of the original emails and *files* and attached as to this declaration as exhibits in
13 Adobe Acrobat PDF format...” Mueller Decl. ¶ 13 (emphases added). The Court finds
14 no reason to doubt this.

15 If Gray’s timeline is accurate, then it would have been impossible for Gray, while
16 writing *Nightweaver*, to have had access to portions of Plaintiff’s Book 1 and *any* of
17 Book 2, since these were not up on Wattpad. And even if Book 1 and Book 2 had been
18 on Wattpad before or during Gray’s writing process, Plaintiff has not carried its burden to
19 show that the two books were widely disseminated enough.

20 2. Striking similarities

21 Next, the Court will examine whether Plaintiff has proven enough “striking
22 similarity” so that access can be presumed. *See Lois*, 2022 WL 4351968, at *2 (citing
23 *Rentmeester v. Nike, Inc.*, 883 F.3d 1111, 1124 (9th Cir. 2018)).

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26 weaker case against Gray, because Gray’s entire manuscript was sent to her editor
27 months before chapters of Book 2 even appeared on Wattpad.

1 Plaintiff must show a “probative or striking similarity [that] shows that the
2 similarities between the two works are due to ‘copying rather than... coincidence,
3 independent creation, or prior common source.’” *Skidmore*, 952 F.3d at 1064 (citation
4 omitted). “A finding of such similarity may be based on the overlap of unprotectable as
5 well as protectable elements.” *Id.* (citation omitted).

6 Plaintiff puts forward several charts that purport to list similarities between
7 *Nightweaver* and its works, Book 1 and Book 2. *See* Aldrich Decl. Ex. 4 (similarities
8 concerning antagonists and family characteristics); Ex. 5 (similarities concerning
9 plotlines); Ex. 6 (similarities concerning specific scenes); Ex. 7 (similarities concerning
10 online marketing for the books).

11 The listed similarities are not “striking.” The most surprising similarities that
12 Plaintiff points out are easily distinguishable on a closer look: a scene involving
13 “surprising technology”⁶ (Ex. 6, items 1 and 2), a memorial of a queen holding an infant⁷
14 (Ex. 6, item 4), the lead female’s recognition of a pirate tattoo on the lead antagonist⁸
15 (Ex. 6, item 5), and the reveal scene where the lead female realizes her love interest is
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19 ⁶ In *Nightweaver*, the surprising technology was an automobile, which the protagonist’s
20 little sister squeals at, and the scene is contextualized by the protagonist’s reflections on
21 how hard life has been for her family. In Book 2, the surprising technology was a robot,
22 which the protagonist herself squeals at, and the scene is set in a glass house, with only
23 the protagonist and her love interest present, and takes place during a flirty exchange.

24 ⁷ In *Nightweaver*, the memorial is of an ancient, legendary queen. In Book 2, the
25 memorial is of the protagonist’s love interest’s mother.

26 ⁸ In *Nightweaver*, the protagonist’s discovery of the tattoo on the antagonist (a depiction
27 of a sparrow in flight) is wrought with anxiety because she realizes he is part of the group
28 that killed her brother. In Book 2, the protagonist looks at the skull tattoo and,
“giggling,” asks the antagonist, “What’s the big deal? It’s just a skull.”

1 actually the enemy pirate⁹ (Ex. 6, item 6). And the rest of Plaintiff’s examples do not
2 come close to anything like “striking similarity.”

3 Additionally, Plaintiff argues that *Nightweaver* is “filled with inconsistencies,” like
4 anachronistic technology, and the scarcity of pirate elements even though it is touted as
5 “pirate book.” Mot. at 13. Plaintiff argues that “[t]hese problems are due to
6 *Nightweaver*’s reliance for its content on Plaintiff’s work, which was not a pirate book.”
7 *Id.* This is completely conclusory, with no legal or evidentiary support. Internal
8 inconsistencies in a work do not indicate that copyright infringement is at work.

9 Plaintiff also alleges that Gray’s manuscript showed “evidence of manipulation
10 and fabrication probative of copying.” *Id.* at 14. Alleged document manipulation has no
11 place in the “strikingly similar” analysis. This bears more on the “access” prong, which
12 was addressed above. To the extent that Plaintiff and Defendants dispute the forensic
13 evidence presented by either side, that is a question best resolved later, not on a motion
14 for preliminary injunction.

15 **B. “Unlawful Appropriation” element**

16 Plaintiff has also not established the second prong, “unlawful appropriation.”
17 Unlawful appropriation requires that the disputed works share substantial similarities.
18 *See Skidmore*, 952 F.3d at 1064. The Ninth Circuit uses a two-part test in order to
19 determine substantial similarity: “the first part, the extrinsic test, compares the objective
20 similarities of specific expressive elements in the two works” and “the second part, the
21 intrinsic test, ‘test[s] for similarity of expression from the standpoint of the ordinary
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25 ⁹ In *Nightweaver*, Captain Shade saved the protagonist from a torturous ship, so he is not
26 only an enemy pirate and the protagonist has a complicated relationship with him. In
27 Book 2, the protagonist only views the antagonist as a “leader of a terrorist group” once
28 she discovers his true identity.

1 reasonable observer, with no expert assistance.” *Id.* (citations omitted). Both tests must
2 be met in order for the works to be considered substantially similar. *Id.*

3 1. Extrinsic test

4 The objective extrinsic test focuses on “articulable similarities between the plot,
5 themes, dialogue, mood, setting, pace, characters and sequence of events” in the two
6 works. *Kouf v. Walt Disney Pictures & Television*, 16 F.3d 1042, 1045 (9th Cir. 1994).
7 In applying the extrinsic test, the court “break[s] the works down into their constituent
8 elements, and compar[es] those elements for proof of copying as measured by substantial
9 similarity.” *Masterson v. Walt Disney Co.*, 821 F. App’x 779, 782 (9th Cir. 2020)
10 (citation omitted). “Because the requirement is one of substantial similarity to protected
11 elements of the copyrighted work, it is essential to distinguish between the protected and
12 unprotected material in a plaintiff’s work.” *Gray v. Hudson*, 28 F.4th 87, 96 (9th Cir.
13 2022). Thus, “a court must filter out and disregard the non-protectible elements in
14 making its substantial similarity determination.” *Cavalier v. Random House, Inc.*, 297
15 F.3d 815, 822 (9th Cir. 2002). This means that “familiar stock scenes,” “themes that are
16 staples of literature,” and “scenes-a-faire” (“incidents that flow necessarily or naturally
17 from a basic plot premise”) are not protectible and must not be part of the “substantial
18 similarity” analysis. *Id.* at 823; *see Skidmore*, 952 F.3d at 1069 (“ideas, concepts, and
19 common elements are excluded” as well as “commonplace elements that are firmly
20 rooted in the genre’s tradition” because “these building blocks belong in the public
21 domain and cannot be exclusively appropriated by any particular author”) (cleaned up).

22 Plaintiff has provided 58 instances of character similarities, 43 instances of plot
23 similarities, and 99 instances of scene similarities. *See Aldrich Decl. Exs. 4, 5, 6*
24 (respectively). These supposed similarities do not persuade the Court.

25 Character similarities. The 58 instances of character “similarities” do not convince
26 the Court of substantial similarity. Most of them relate to common themes, genre tropes,
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1 and ideas that are not protected under copyright law: blue eyes, a stone fortress, a royal
2 boy, meeting at night in a garden, twinkling eyes, etc. These ideas are much too “general
3 of a similarity” to pass the extrinsic test. *Masterson*, 821 F. App’x at 782. Sometimes
4 Plaintiff exaggerates the similarities between the works. For example, Plaintiff claims
5 that each antagonist keeps “out of the public spotlight,” but the passages show this
6 “similarity” to be imprecise: compare “My brother and I are to remain out of the public
7 spotlight until we turn twenty-one” (Book 2) with “he must be devastatingly handsome.
8 Few have ever seen him face-to-mask.” (*Nightweaver*). As another example, Plaintiff
9 claims that both works have brothers who have “the ability to control multiple wolf
10 dogs/wolves” because in Book 2, there is a character who has trained Siberian huskies; in
11 *Nightweaver*, there is a character who has the magical ability to control wolves. Aldrich
12 Decl. Ex. 4 at 8. Surely, this is stretching the similarity thin.

13 Plot similarities. Plaintiff also does not prove substantial similarity here. Many of
14 its plotlines are generic tropes of the fantasy and romance genres: an independent teen
15 heroine, a love triangle, an antagonist prince, a glamorous ball, a garden picnic, and an
16 incidence of poisoning. Aldrich Decl. Ex. 5; *see* Gray Decl. ¶ 39 (detailing traditional
17 elements of YA fantasy). These 43 plot similarities fail to go beyond the common
18 elements found in young adult fantasy literature; they are not “the expression of a
19 particular, copyrightable setting.” *Van v. Cameron*, 2011 WL 13121345, at *3 (S.D. Cal.
20 July 13, 2011).

21 Scene similarities. The 99 instances of “similarities” are replete with common
22 phrases, verbs and adjectives, and idioms. As a particularly absurd example, similarity
23 #86 compares “She blinked” (Book 2) with “He blinks” (*Nightweaver*). Aldrich Decl.
24 Ex. 6 at 40. Another example (similarity #80): “His top lip curled into a snarl” (Book 2)
25 and “Percy’s lip curls into a snarl” (*Nightweaver*). *Id.* at 38. Plaintiff does not have any
26 more ownership over the phrase “curl into a snarl” than does any other member of the
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1 public. This is not protectible work. There are some examples of longer scenes, but they
2 suffer from the same flaw: they're full of scenes, themes, and vocabulary that are
3 common to the romance genre. They are also not protectible.

4 Plaintiff also alleges that Gray used similar graphics and language in marketing her
5 book as Plaintiff did for its own works (e.g., roses and mention of a "foreign country").
6 The *marketing* of the works is not relevant to the copyright infringement analysis of the
7 *content* of the works. Plaintiff provides no legal support to show otherwise.

8 Finally, Plaintiff asserts that there have been noted "inconsistencies" in Gray's
9 book and that Gray altered the manuscript to look like it pre-dated Plaintiff's works – and
10 that these bolster the infringement allegations. But both of these arguments have already
11 been addressed and dismissed in the previous section, *see supra*.

12 The Court finds that Plaintiff fails to meet the extrinsic test because it cannot prove
13 substantial similarity based on the provided examples of non-protected ideas, common
14 themes, and scenes-a-faire.

15 2. Intrinsic test¹⁰

16 The intrinsic test looks at whether there is a "similarity of expression from the
17 standpoint of the ordinary reasonable observer, with no expert assistance." *Skidmore*,
18 952 F.3d at 1064. Since Plaintiff fails to meet the extrinsic test, the Court does not need
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22 ¹⁰ Although the intrinsic test is left to a jury, the Court examines it here to see if Plaintiff
23 will be likely to prevail on the merits. *See Chase-Riboud v. Dreamworks, Inc.*, 987 F.
24 Supp. 1222, 1226 n.4 (C.D. Cal. 1997) ("While the intrinsic test for expression is
25 uniquely suitable for resolution by the trier of fact, the Court may properly consider the
26 intrinsic test at the preliminary injunction stage. The question before the Court is whether
27 it is likely that Plaintiff will prevail on the merits or, in other words, persuade the jury
28 that there is substantial similarity of expression and that, therefore, Defendants have
infringed her work.") (cleaned up).

1 to consider the intrinsic test, since both have to be met in order for unlawful appropriation
2 to be found. *See Cavalier*, 297 F.3d at 824.

3 In any case, Plaintiff’s works (Book 1 and Book 2) and *Nightweaver* do not share
4 substantial similarity in the ‘total concept and feel.’” *Chase-Riboud*, 987 F. Supp. at
5 1226 (citation omitted). *Nightweaver* takes place in a supernatural world with magical,
6 vampire-like creatures, while Plaintiff’s story is at least partially set in the contemporary
7 world of Connecticut. Response at 21. Aldrich’s own declaration shows that the “feel”
8 of the two works are very different. *See* Aldrich Decl. ¶ 51 (“my book was a happy,
9 wonderful world [readers] could disappear into” but Gray’s story is “gruesome with
10 stabbing, beheading, blood and death”). Thus, the Court finds that Plaintiff would likely
11 fail on the merits based on the intrinsic test as well.

12 Because the determination of likelihood of success on the merits is a threshold
13 inquiry, “when a plaintiff has failed to show the likelihood of success on the merits, we
14 need not consider the remaining three *Winter* elements.” *Garcia*, 786 F.3d at 740
15 (cleaned up). However, the Court here will go through each of the elements for the sake
16 of completeness.

17 **I. Irreparable harm**

18 Irreparable harm must be shown by the plaintiff. There is no rebuttable
19 presumption of irreparable harm. *See Puma SE v. Forever 21, Inc.*, 2017 WL 4771003,
20 at *2 (C.D. Cal. June 2, 2017). “Following *eBay* and *Winter*, [the Ninth Circuit] held that
21 likely irreparable harm must be demonstrated to obtain a preliminary injunction in a
22 copyright infringement case...” *Herb Reed Enters., LLC*, 736 F.3d 1239, 1249 (9th Cir.
23 2013). Thus, those “seeking injunctive relief must proffer evidence sufficient to establish
24 a likelihood of irreparable harm.” *Id.* at 1251.

25 Plaintiff argues that it will suffer irreparable harm if a preliminary injunction is not
26 granted because its reputation is harmed due to “the potential that purchasers of
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1 Defendant Gray’s work might believe Liz Ald is the infringer and not Defendant Gray.”
2 Mot. at 20. Plaintiff also argues that its goodwill with current and prospective readers is
3 “damaged in an ongoing sense so long as the infringing book is available for purchase.”
4 *Id.* Finally, Plaintiff also asserts that *Nightweaver* has led to customer confusion and
5 dilutes Plaintiff’s brand, such that Plaintiff continues to “lose its market share and
6 competitive position in the YA novel market.” *Id.* at 21.

7 However, beside conclusory statements that it will suffer irreparable harm to its
8 reputation and goodwill, Plaintiff has not provided any actual evidence to support these
9 claims. *See Gowan Co., LLC v. Aceto Agr. Chems.*, 2009 WL 2028387, at *5 (D. Ariz.
10 July 10, 2009) (“Damages to goodwill and reputation have typically supported findings
11 of irreparable harm only where evidence clearly supports such damage.”) Given the fact
12 that *Nightweaver* has been on shelves for over a year, this absence – of any evidence of
13 consumer confusion or of Plaintiff’s brand being diluted – is particularly striking. As to
14 Plaintiff’s claims that it will lose its market share, Plaintiff does not explain why this
15 harm cannot be addressed by potential monetary damages.

16 Plaintiff also argues that the allegedly infringing acts have caused “significant
17 emotional damage to Plaintiff’s health and life-long love of writing.” Reply at 9. It is
18 true that in general, emotional distress can constitute irreparable harm. *See Chalk v. U.S.*
19 *Dist. Court. Cent. Dist. of Cal.*, 840 F.2d 701, 709 (9th Cir. 1988). However, in the
20 context of copyright law, the Ninth Circuit in *Garcia* made clear that the irreparable harm
21 “must stem from copyright” and cannot be “too attenuated from the purpose of
22 copyright.” *Garcia*, 786 F.3d at 745, 746. The *Garcia* court therefore rejected the
23 plaintiff’s claim of emotional distress as irreparable harm. *Id.* at 744-45; *see also S.*
24 *California Rental Hous. Ass’n v. Cnty. of San Diego*, 550 F. Supp. 3d 853, 870 (S.D.
25 Cal. 2021) (citing *Garcia* for the proposition that “assertions of emotional distress are not
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1 cognizable irreparable harm for copyright claims because there is no cause of action for
2 emotional distress under the Copyright Act”).

3 Further, Plaintiff’s delay in bringing this motion demonstrates that there is a lack
4 of irreparable harm. *See Miller v. Cal. Pac. Med. Ctr.*, 991 F.2d 536, 544 (9th Cir. 1993)
5 (plaintiff’s “long delay before seeking a preliminary injunction implies a lack of urgency
6 and irreparable harm”). Plaintiff was aware of the existence of *Nightweaver* as early as
7 March 2024, when it sent the cease-and-desist letter to Gray. It filed this motion for
8 preliminary injunction in November 2024. While it may have been the case that Plaintiff
9 filed this motion so late because it only recently discovered the alleged document
10 manipulation by Gray, this still does not excuse Plaintiff’s delay: if Plaintiff felt that
11 *Nightweaver*’s existence on the shelves imminently imperiled its own works, then it
12 would have pursued legal action, including injunctive relief, regardless of whether it
13 believed Gray had manipulated her manuscript or not. This delay demonstrates the lack
14 of immediacy and urgency that would normally accompany irreparable harm.

15 Accordingly, the Court finds that this element counsels against injunctive relief.

16 **II. Balance of hardships**

17 Plaintiff must also show that the balance of equities “tip” in its favor. *See Winter*,
18 555 U.S. at 20. The court “must balance the competing claims of injury and must
19 consider the effect on each party of the granting or withholding of the requested relief.”
20 *Id.* at 24.

21 Plaintiff argues that its copyright holder rights “are being damaged in an ongoing
22 sense and a preliminary injunction is the only way to avoid further harm to Plaintiff.”
23 Mot. at 22. A preliminary injunction would protect Plaintiff’s exclusive rights to “control
24 and profit from its protected work, specifically protecting Plaintiff’s market share, brand
25 reputation and any future licensing or customer sales opportunities.” *Id.*

1 These are only the expected, general benefits of copyright law. Plaintiff needs to
2 show more specifically how *it* has been harmed by *Nightweaver*'s existence in the
3 market. However, as the Court found above, Plaintiff has not demonstrated with any
4 evidence that it will endure any irreparable harm if a preliminary injunction is not issued:
5 there is no evidence given that consumer confusion has been created by *Nightweaver* in
6 the YA marketplace or that Plaintiff has lost its control over its own work's quality.
7 "Balanced against the absence of any showing of irreparable harm to Plaintiffs, the
8 substantial harm to Defendants strongly weighs against the issuance of an injunction."
9 *Batts v. Adams*, 2011 WL 13217923, at *8 (C.D. Cal. Feb. 8, 2011).

10 Furthermore, Plaintiff downplays the harm that Defendant Hatchette would endure,
11 because according to Plaintiff, Hatchette is a large-scale publisher that "is not dependent
12 on only the sales of *Nightweaver*." Mot. at 22. A preliminary injunction would thus only
13 be a "minor inconvenience" for Hatchette. *Id.*

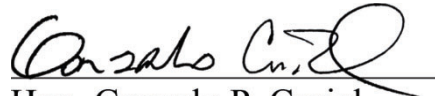
14 Defendants paint an entirely different picture, arguing that a preliminary injunction
15 would cause substantial harm to Defendants and others in the publishing world.
16 According to Hatchette Senior Editor Alexandra Hightower, *Nightweaver* is the "lead
17 title" in Hatchette's winter/spring cycle, which means that it is the focus of the
18 company's marketing, publicity, and sales efforts, and Hatchette "will put a large portion
19 of the financial resources and labor allocated for the season" behind this title. Hightower
20 Decl. ¶ 9. In preparation for the March 2025 release date for its deluxe edition of
21 *Nightweaver*, Hatchette has already engaged in a six-figure marketing and publicity
22 campaign for the book, including printing 60,000 copies and more than 800 advance
23 copies, some of which have already been sent out. *Id.* ¶¶ 9, 13, 15, 25. There are over
24 1,000 preorders from readers (and counting). *Id.* ¶ 23. An injunction would cause the
25 loss of over \$700,000, which includes reimbursement of the preorders, loss of expected
26 sales, cancellation of events, and loss incurred by the Hatchette editorial team. *Id.* ¶ 25,
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1 26. Hatchette has already spent more than \$150,000 to date on *Nightweaver*, which does
2 not include overhead or Gray’s significant advance. *Id.* ¶ 26.

3 The stakes are higher because *Nightweaver* is envisioned as part of a trilogy.
4 *Nightweaver*’s release date was “carefully selected to position the book well ahead of
5 summer reading” and in order to publish the sequel within the same calendar year, “thus
6 maximizing buzz and building excitement amongst fantasy readers.” *Id.* ¶ 12. An
7 injunction would “inflict reputational harm on the author and any depression of sales of
8 this first novel will directly impact the success of the second and third books of this series
9 that Hatchette has already contracted for.” *Id.* ¶ 28. Hatchette’s own reputation would
10 take a hit, and compromise the careers of other authors published by Hatchette, and there
11 would be ripple effects throughout the “entire ecosystem surrounding the YA market.”
12 *Id.* ¶¶ 29, 30. Courts have found these harms to be cognizable. *See Trust Co. Bank v.*
13 *Putman Pub. Grp., Inc.*, 1988 WL 62755, at *3 (C.D. Cal. Jan. 4, 1988) (finding
14 defendant’s goodwill with retailers would be damaged and could impact sale of other
15 books for months to come); *Wild*, 2013 WL 12137684, at *3 (finding defendant’s ability
16 to obtain shelf space for future novels would be endangered).

17 As for Gray, a delay in publishing *Nightweaver* could mean that Hatchette
18 ultimately decides to cancel her contract and not publish any books in the series – which
19 would have serious consequences on her personal finances. Gray Decl. ¶¶ 41, 44. Gray
20 has already put in nearly five years and over \$20,000 of her own money into writing, self-
21 publishing, and marketing this book. *Id.* ¶¶ 20, 41. Now that she is at the cusp of new
22 professional milestone, she faces an injunction that would threaten to damage her
23 reputation in the YA and writing community and inflict “severe psychological damage.”
24 *Id.* ¶ 41.

1 Dated: January 28, 2025


2 Hon. Gonzalo P. Curiel
3 United States District Judge
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