Nos. 21-3079; 21-3081

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

THE SATANIC TEMPLE, INC.
Plaintiff / Appellant

v.

CITY OF BELLE PLAINE, MN,
Defendant / Appellee.

On Appeal from the United States District Court
for the District of Minnesota

Case Nos. 0:19-cv-1122 and 0:21-cv-336

Hon. Wilhelmina Wright, U.S. District Judge, presiding

Addendum for The Satanic Temple, Inc.

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

The Satanic Temple, Plaintiff, v. City of Belle Plaine, Minnesota; Councilman Cary Coop; Councilwoman Theresa McDaniel; Councilman Ben Stier; Councilman Paul Chard; and Mayor Christopher Meyer, Defendants.	Case No. 19-cv-1122 (WMW/LIB) **ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS AND DENYING PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS**

This matter is before the Court on the parties' cross motions for judgment on the pleadings. Plaintiff The Satanic Temple (TST) moves for judgment on the pleadings as to Count II of its complaint, which alleges a violation of its right to free speech as protected by the First Amendment to the United States Constitution. (Dkt. 22.) Defendants City of Belle Plaine, Minnesota (Belle Plaine), Mayor Christopher Meyer, and Belle Plaine city council members Cary Coop, Theresa McDaniel, Ben Stier, and Paul Chard (Council Members), move for judgment on the pleadings as to the entire complaint. (Dkt. 27.) For the reasons addressed below, the Court denies TST's motion for judgment on the pleadings and grants in part and denies in part Defendants' motion for judgment on the pleadings.

BACKGROUND

Two resolutions passed by the Belle Plaine City Council are relevant to the legal analysis in this proceeding, Resolution 17-020 and Resolution 17-090. On February 21,

2017, the Belle Plaine City Council enacted Resolution 17-020, titled "ESTABLISHING A POLICY REGARDING A LIMITED PUBLIC FORUM IN VETERANS MEMORIAL PARK." In relevant part, Resolution 17-020 provides as follows:

> [T]he Council wishes to allow private parties access to Veterans Memorial Park for the purpose of erecting displays in keeping with the purpose of honoring and memorializing veterans . . . .
>
> . . .
>
> 1. The City designates a limited public forum in Veterans Memorial Park for the express purpose of allowing individuals or organizations to erect and maintain privately owned displays that honor and memorialize living or deceased veterans, branch of military and Veterans organizations affiliated with Belle Plaine. . . .
>
> . . .
>
> 9. The requesting party and not the City shall own any display erected in the limited public forum. The display must have liability coverage of 1,000,000 . . . .
>
> . . .
>
> 13. In the event the City desires to close the limited public forum or rescind this policy, the City, through its City Administrator, may terminate all permits by giving ten (10) days' written notice of termination to [the] Owner, within which period the owner must remove their display from city property.

On July 17, 2017, Resolution 17-020 was rescinded by the enactment of Resolution 17-090, titled "RESCINDING THE POLICY AND ELIMINATING THE LIMITED PUBLIC

FORUM IN VETERANS MEMORIAL PARK." In relevant part, Resolution 17-090 provides:

> BE IT RESOLVED by the Council of the City of Belle Plaine, Minnesota:
>
> 1. The policy established in Resolution 17-020 is rescinded and the limited public forum established in the Park is hereby eliminated. Private displays or memorials placed in the Park shall be removed within a reasonable period by the owner thereof or, upon notice to such owner, or they will be deemed abandoned and removed by the City.

On February 23, 2017, TST submitted an application to erect a display in Belle Plaine's Veterans Memorial Park pursuant to Resolution 17-020. TST received a permit on March 29, 2017. The Belle Plaine Veterans Club also obtained a permit under Resolution 17-020 to erect a display.[1] On June 29, 2017, TST notified the City Administrator that its memorial monument was complete. TST spent "substantial sums in the design and construction of its display" and acquired liability insurance as required by Resolution 17-020.

Before the passage of Resolution 17-090 on July 17, 2017, Belle Plain Veteran's Club voluntarily removed its display from Veterans Memorial Park. Resolution 17-020 was rescinded by Resolution 17-090 on July 17, 2017. The next day, Belle Plaine notified TST by letter that the Belle Plaine City Council adopted Resolution 17-090 and enclosed

[1] Neither party identifies the date on which the Belle Plaine Veterans Club's permit was issued or approved. Both parties appear to agree that the permit was approved and issued after Resolution 17-020 was passed and before Belle Plaine Veterans Club voluntarily removed its display.

a check reimbursing TST for its permit-application fee. As a result of Resolution 17-090, TST never erected its display.

Immediately after the rescission, Belle Plaine issued a press release dated July 18, 2017, which states in relevant part:

> As called-for in the resolution, owners of all privately-owned Park displays currently located in the Park's designated space are now being given 10 days' notice to remove the displays . . . .
>
> The original intent of providing the public space was to recognize those who have bravely contributed to defending our nation through their military service. In recent weeks and months, though, that intent has been overshadowed by freedom of speech concerns expressed by both religious and non-religious communities.
>
> The debate between those communities has drawn significant regional and national attention to our city, and has promoted divisiveness among our own residents.
>
> While this debate has a place in public dialogue, it has detracted from our city's original intent of designating a space solely for the purpose of honoring and memorializing military veterans, and has also portrayed our city in a negative light.

On April 25, 2019, TST commenced this action against Belle Plaine, Mayor Christopher Meyer, and four Belle Plaine City Council Members in their individual and official capacities. Counts I and IX of the complaint allege violations of TST's right to free exercise of religion under both the United States Constitution and the Minnesota Constitution. Counts II and X allege violations of TST's right to free speech under both the United States Constitution and the Minnesota Constitution. Count III alleges a violation of TST's rights under the Equal Protection Clause of the United States

Constitution. Count V alleges a violation of the Religious Land Use and Institutionalized Person Act of 2000 (RLUIPA), 42 U.S.C. § 2000cc. And Count VII alleges promissory estoppel. TST moves for judgment on the pleadings as to Count II, and Belle Plaine cross moves for judgment on the pleadings as to the entire complaint.[2]

ANALYSIS

Judgment on the pleadings is proper when there are no issues of material fact to be resolved and the moving party is entitled to judgment as a matter of law. *Faibisch v. Univ. of Minn.*, 304 F.3d 797, 803 (8th Cir. 2002). When evaluating the merits of a motion for judgment on the pleadings, the district court applies the same legal standard that applies to a motion to dismiss. *See* Fed. R. Civ. P. 12(b)(6); *see also Ashley County v. Pfizer, Inc.*, 552 F.3d 659, 665 (8th Cir. 2009). To survive a motion for judgment on the pleadings, the complaint must contain sufficient factual allegations to state a plausible claim for relief. *See Clemons v. Crawford*, 585 F.3d 1119, 1124 (8th Cir. 2009). A district court accepts as true all facts pleaded by the nonmoving party and draws all reasonable inferences from the pleadings in favor of that party. *Corwin v. City of Independence, Mo.*, 829 F.3d 695, 699 (8th Cir. 2016). Without more, merely reciting the elements of a cause of action is insufficient, and legal conclusions asserted in the complaint are not entitled to the presumption of truth. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). When deciding a motion for judgment on the pleadings, a district court refrains from considering matters beyond

[2] Plaintiff concedes that its contract-related claims (Counts IV, VI, and VIII) should be dismissed. And this Court agrees. Those counts are dismissed without prejudice as the Court need not reach the merits of those claims.

the pleadings, other than certain public records and "materials that do not contradict the complaint, or materials that are necessarily embraced by the pleadings." *Saterdalen v. Spencer*, 725 F.3d 838, 841 (8th Cir. 2013) (internal quotation marks omitted).

I. TST's Section 1983 Claims (Counts I, II, and III) Against the Individual Defendants

Defendants first seek dismissal of the claims against all individual defendants—namely, the Mayor and the individual Council Members—arguing that TST fails to state a claim for personal liability as to the individual defendants. TST does not dispute the dismissal of its claims against those individual defendants who are immune from liability for their legislative acts. But TST asserts that dismissal is unwarranted as to the claims for injunctive relief against these defendants in their official capacities.

It is well established that "[l]ocal legislators are entitled to absolute immunity from §1983 liability for their legislative activities." *Bogan v. Scott-Harris*, 523 U.S. 44, 54 (1998); *Hope Baptist Church v. City of Bellefontaine Neighbors*, 655 F. Supp. 1216, 1221 (E.D. Mo. 1987) (concluding that the city legislators were entitled to absolute immunity and dismissing the defendant mayor when the complaint failed to allege performance of any action by the mayor regarding plaintiff's rezoning application). When determining whether an act is legislative, courts consider the nature of the act, not the motive or intent of the official performing the act. *Bogan*, 523 U.S. at 54; *Klingner v. City of Braham*, 130 F. Supp. 2d 1068, 1072 (D. Minn. 2001) (explaining that a city council's act of passing an ordinance, adopting a resolution, and passing a second ordinance, and the mayor's act of signing the ordinance into law, were legislative). Voting on a council resolution is a

"quintessentially legislative" act that rests within the bounds of legitimate legislative activity. *Bogan*, 523 U.S. at 55.

TST identifies no factual or legal grounds that support holding the Council Members and the Mayor liable in their individual capacities for TST's Section 1983 claims. At best, the complaint identifies the fact that the individual Council Members voted to enact Resolution 17-020 and Resolution 17-090. Additionally, TST identifies statements by the Council Members regarding the intent of rescinding Resolution 17-020. These statements are insufficient, as this Court must consider only the *nature* of the act after stripping it of "all considerations of intent and motive." *Bogan*, 523 U.S. at 55. TST concedes, and the Court agrees, that the enactment by vote of Resolution 17-090, regardless of the Council's rationale, is a "quintessentially legislative" function and an "integral step[ ] in the legislative process." *Id.*

Furthermore, because all remaining claims against Defendants are disposed of by this Order for the reasons addressed below, no grounds to seek injunctive relief remain. Without allegations to support the claims asserted against the Mayor and Council Members in their individual capacities, TST fails to state a claim on which relief can be granted. For this reason, TST's Section 1983 claims (Counts I, II, and III) against the Council Members and the Mayor are dismissed. Having dismissed all individual defendants, the Court now considers the claims against Belle Plaine.

II. Free-Exercise Claims (Counts I and IX)

Belle Plaine seeks judgment on the pleadings as to TST's free-exercise claims, arguing that TST fails to adequately allege how Resolution 17-090 substantially burdens

TST's ability to freely exercise religion. Belle Plaine also maintains that TST fails to sufficiently allege either how the enactment of Resolution 17-090 required TST to change its religious conduct or philosophy, or whether Resolution 17-090's interference with TST's religious beliefs or religious practices is real and not remote. Consequently, Belle Plaine argues, it is entitled to judgment on the pleadings on TST's free-exercise claims under both the United States Constitution and the Minnesota Constitution.

To successfully plead and prove a free-exercise violation of the First Amendment to the United States Constitution, TST must establish that the governmental activity at issue places a substantial burden on its religious practice. *Patel v. U.S. Bureau of Prisons*, 515 F.3d 807, 813 (8th Cir. 2008). Free exercise of religion is substantially burdened when a regulation "significantly inhibit[s] or constrain[s] conduct or expression that manifests some central tenet of a person's individual religious beliefs; . . . meaningfully curtail[s] a person's ability to express adherence to his or her faith; or den[ies] a person reasonable opportunity to engage in those activities that are fundamental to a person's religion." *United States v. Ali*, 682 F.3d 705, 709–10 (8th Cir. 2012) (internal quotation marks omitted).

TST fails to allege any constraint on either conduct or expression of a central tenet of TST's religious beliefs. Instead TST makes conclusory statements in an effort to support Count I. For example, TST alleges that 1) "[t]he actions of Belle Plaine . . . continue to violate Plaintiffs' rights under the Free Exercise Clause by imposing a substantial burden upon the religious exercise of Plaintiff TST and by intentionally discriminating against Plaintiff on the basis of religious belief;" 2) "a substantial burden has been imposed though

[*sic*] discriminatory and arbitrary revocation/denial/rescission of Plaintiff's previously approved application to construct a veteran's memorial at Veterans Memorial Park;" and 3) "Defendants discriminated against Plaintiff TST because of animus towards Plaintiff's religion."

These allegations fail to state a claim for relief for three reasons. First, although TST identifies the core tenants of its religion, TST fails to explain or allege facts that identify any central tenet of its religious beliefs that TST cannot exercise because of Resolution 17-090. Second, TST alleges no facts demonstrating that Resolution 17-090 prevents TST from expressing adherence to its faith. And third, TST fails to allege whether and how any activity that Resolution 17-090 prohibits is fundamental to TST's religion. Not one allegation in TST's complaint, either expressly or by reasonable inference, explains *how* Resolution 17-090 burdens TST's religious practice. As such, TST's conclusory allegations do not state a plausible claim that Resolution 17-090 violates TST's right to the free exercise of religion in violation of the First Amendment.

The Minnesota Constitution "afford[s] greater protection for religious liberties against governmental action than" the First Amendment. *Hill-Murray Fed'n of Teachers v. Hill-Murray High Sch.*, 487 N.W.2d 857, 865 (Minn. 1992). When evaluating a free-exercise claim under the Minnesota Constitution, courts consider "whether the objector's belief is sincerely held; whether the state regulation burdens the exercise of religious beliefs; whether the state interest in the regulation is overriding or compelling; and whether the state regulation uses the least restrictive means." *Id.* at 865. Under the second *Hill-Murray* factor, those challenging the application of a law have the burden of establishing

that the challenged provision infringes their religious autonomy or requires conduct inconsistent with their religious beliefs. *Edina Cmty. Lutheran Church v. State*, 745 N.W.2d 194, 204 (Minn. Ct. App. 2008). To demonstrate such a burden, a plaintiff "must establish that the risk of interference with religious beliefs or practice is real and not remote." *Id.* (citing *Hill-Murray*, 487 N.W.2d at 866). "Religious institutions can be required to comply with statutes of general application, and the focus is on whether compliance requires a change in religious conduct or philosophy." *Id.* (internal quotation marks omitted).

In this instance, TST sufficiently alleges the sincerity of TST's religious beliefs. TST fails, however, to allege any facts that Resolution 17-090 burdens the *exercise* of TST's sincerely held religious beliefs. Instead, TST merely proffers one conclusory statement in support of Count IX: "Defendants' motivation for enacting the rescission Resolution and terminating Plaintiff's permit to erect a display that honored veterans was significantly or exclusively because of Plaintiff's religious beliefs in violation of the Minnesota Constitution." But TST does not allege that Resolution 17-090 spurred TST to change its religious philosophy or conduct. Nor does TST allege that Resolution 17-090 required TST to act in a manner inconsistent with its religious beliefs. And TST has advanced no allegation from which the Court could draw a reasonable inference to that effect. In the absence of such factual allegations, the Court need not address whether the state interest is overriding or compelling and uses the least restrictive means. *Id.* at 208–10 (reaching the third and fourth factors only after respondent churches established that their religious beliefs were sincere *and* the exercise of their religious beliefs were

burdened). Accordingly, TST's sole conclusory allegation does not state a plausible claim that Resolution 17-090 violates TST's right to free exercise of religion in violation of the Minnesota Constitution.

Because TST's conclusory allegations do not state a plausible claim that Resolution 17-090 violates TST's right to the free exercise of religion in violation of the United States Constitution or the Minnesota Constitution, Belle Plaine's motion for judgment on the pleadings as to TST's free-exercise claims, Counts I and IX, is granted.

III. Free-Speech Claims (Counts II and X)

Belle Plaine also moves for judgment on the pleadings as to TST's free-speech claims, which allege violations of the First Amendment to the United States Constitution and Article 1, Section 3, of the Minnesota Constitution. In support of its motion, Belle Plaine contends TST's conclusory allegations fail to identify how Resolution 17-090 violates TST's free-speech rights. TST cross-moves for judgment on the pleadings as to its First Amendment free-speech claim. The impetus for Belle Plaine's enactment of Resolution 17-090, TST argues, was the controversial and divisive nature of TST's speech. The parties dispute whether Resolution 17-090 is reasonable and viewpoint neutral.

"Congress shall make no law . . . abridging the freedom of speech." U.S. Const. amend. I. But one is not guaranteed "the right to communicate one's views at all times and places or in any manner that may be desired." *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 647 (1981). The character of the location where TST's claim arose governs any First Amendment public-forum analysis. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 44 (1983). Three categories of forums are

germane: "(1) the traditional public forum; (2) the designated public forum; and (3) the nonpublic forum." *Families Achieving Indep. & Respect v. Neb. Dep't of Soc. Servs.*, 111 F.3d 1408, 1418 (8th Cir. 1997). Courts also distinguish between limited and unlimited public forums. *Bowman v. White*, 444 F.3d 967, 976 (8th Cir. 2006). A limited public forum exists when "the government opens a non-public forum but limits the expressive activity to certain kinds of speakers or to the discussion of certain subjects." *Id.* (internal quotation marks omitted). Any restriction on speech that does not fall within the type of expression permitted in a limited public forum must be reasonable and viewpoint neutral. *Id.* But the government need not keep a limited forum open indefinitely. *See Perry Educ.*, 460 U.S. at 46.

TST's First Amendment claim alleges that Belle Plaine violated TST's right to free speech when the City Council enacted Resolution 17-090, thereby rescinding Resolution 17-020, which established a limited public forum in Veterans Memorial Park. Even if TST had a First Amendment right to speak while Resolution 17-020 was in effect, Belle Plaine's decision to rescind Resolution 17-020 and thereby close the limited public forum does not give rise to a First Amendment challenge. The parties do not dispute that Veterans Memorial Park was a limited public forum under Resolution 17-020. Therefore, to withstand Belle Plaine's motion for judgment on the pleadings, TST must allege that Resolution 17-090 was unreasonable and not viewpoint neutral. But TST's complaint fails to identify how Resolution 17-090 is unreasonable or discriminatory. Instead, the complaint identifies another organization that *voluntarily* removed its monument before Belle Plaine enacted Resolution 17-090 and alleges that permitting the Belle Plaine

Veterans Club to display its monument for *any* amount of time suggests that Belle Plaine treated the two organizations differently. TST identifies a discrepancy in timing, namely, that TST's memorial was not completed and ready for display prior to the passage of Resolution 17-090. But TST alleges no facts demonstrating that Resolution 17-090 did not apply equally to all entities seeking to erect a display or that TST was the only organization excluded from displaying a monument in Veterans Memorial Park.

Plaintiff's free-speech claim alleging a violation of the Minnesota Constitution fails for the same reasons. The right to free speech protected by the Minnesota Constitution "is coextensive with the First Amendment," and Minnesota courts "look primarily to federal law for guidance." *Tatro v. Univ. of Minn.*, 816 N.W.2d 509, 516 (Minn. 2012) (citing *State v. Wicklund*, 589 N.W.2d 793, 798–801 (Minn. 1999)). Because the allegations in TST's complaint do not state a claim for a free-speech violation under the First Amendment, TST also fails to state a claim that Resolution 17-090 violates TST's right to free speech under the Minnesota Constitution.

For these reasons, Belle Plaine's motion for judgment on the pleadings as to TST's free-speech claims (Counts II and X) is granted. TST's cross-motion for judgment on the pleadings as to Count II is denied.

IV. Equal-Protection Claim (Count III)

Belle Plaine seeks judgment on the pleadings as to TST's equal-protection claim, arguing that TST fails to allege any facts that Resolution 17-090 does not apply equally to private entities seeking to install a display in Veterans Memorial Park. In response, TST

argues that the retroactive nature of Resolution 17-090 uniquely targets TST because of the controversial and divisive nature of TST's religion or speech.

To plead an equal-protection claim in violation of the United States Constitution, TST must allege: 1) TST was singled out and treated differently from similarly situated entities; and 2) the reason for taking this action was a prohibited purpose or motive, such as discrimination based on TST's religion. *See Ellebracht v. Police Bd. of Metro. Police Dep't of St. Louis*, 137 F.3d 563, 566 (8th Cir. 1998). Here, TST must allege that it is similarly situated "in all relevant respects" to any group with which it compares itself. *Carter v. Arkansas*, 392 F.3d 965, 969 (8th Cir. 2004). A plaintiff's failure to demonstrate that it "is similarly situated to those who allegedly receive favorable treatment" precludes the viability of an equal-protection claim because the Equal Protection Clause does not preclude dissimilar treatment of dissimilarly situated entities. *Klinger v. Dep't of Corr.*, 31 F.3d 727, 731 (8th Cir. 1994); *see also Roark v. City of Hazen*, 189 F.3d 758, 761–62 (8th Cir. 1999) (holding that plaintiff's equal-protection claim failed because no evidence of dissimilar treatment of similarly situated individuals was presented). Here, the threshold inquiry in the equal-protection analysis is whether TST is similarly situated to any institution or person who allegedly received favorable treatment under Resolution 17-090. *United States v. Whiton*, 48 F.3d 356, 358 (8th Cir. 1995).

TST's equal-protection claim alleges that the retroactive nature of Resolution 17-090 uniquely targeted TST because of its controversial religion or speech. But TST's equal-protection claim fails, as a threshold matter, because TST and the Belle Plaine Veterans Club are not similarly situated. Regardless of whether TST brings its equal-

protection claim as a member of a protected class or as a class of one, TST must allege dissimilar treatment of similarly situated parties. *Mitchell v. Dakota Cty. Soc. Servs.*, 357 F. Supp. 3d 891, 902 (D. Minn. 2019). TST's complaint fails to allege any dissimilar treatment relative to similarly situated parties. TST's complaint is void of *any* allegation as to how TST and Belle Plaine Veterans Club are similarly situated. Even so, Belle Plaine Veterans Club, the only other organization to receive a permit to place a display in the park, removed its display prior to the passing of Resolution 17-090. To the extent TST argues that it was treated differently because TST was prohibited from erecting its display while Belle Plaine Veterans Club was able to display its memorial, TST does not allege disparate treatment of a suspect class. *See, e.g.*, *Monumental Task Comm., Inc. v. Foxx*, 259 F. Supp. 3d 494, 505 (E.D. La. 2017) (explaining that city's decision to remove all but one statute did not involve a suspect class and applying rational basis review to analysis of the alleged differential treatment).

Even assuming that TST and Belle Plaine Veterans Club were similarly situated and that TST is part of a suspect class, TST fails to plead a viable equal-protection claim because TST does not allege any facts suggesting that Resolution 17-090 is discriminatory on its face or that Resolution 17-090 has both a discriminatory purpose and discriminatory impact. *See Mitchell*, 357 F. Supp. 3d at 902 (citing *Washington v. Davis*, 426 U.S. 229, 242 (1976)). TST merely alleges that Belle Plaine's "motivation for enacting the rescission Resolution and terminating Plaintiff's permit . . . was significantly or exclusively to inflict harm on a politically unpopular group . . . ." This conclusory allegation alone, however is insufficient. *See Iqbal*, 556 U.S. at 686 (conclusory allegations that defendants

discriminated against plaintiff on account of "religion, race, and/or national origin" were insufficient to state a claim). Furthermore, the text of Resolution 17-090, which states that "[p]rivate displays or memorials placed in the Park shall be removed within a reasonable period" and that "[a]ll application fees . . . will be reimbursed," demonstrates that the resolution applies equally to all entities that sought to erect a display in Veterans Memorial Park. As evidence of discriminatory impact, TST argues that the Belle Plaine Veterans Club was able to erect and voluntarily remove its display prior to the passage of Resolution 17-090. But this difference in treatment is attributable to when Resolution 17-090 was enacted in relation to the completion of each group's display. The fact that the Belle Plaine Veterans Club erected its display earlier than TST is not alleged to have been in Belle Plaine's control. And TST offers no allegation or evidence that the enactment of Resolution 17-090 was timed for the discriminatory purpose of treating TST differently than other groups.

Without any allegation that TST and Belle Plaine Veterans Club are similarly situated, that Resolution 17-090 is discriminatory on its face, or that Resolution 17-090 is discriminatory in purpose and impact, TST fails to state a claim on which relief can be granted under the Equal Protection Clause of the United States Constitution. For this reason, Belle Plaine's motion for judgment on the pleadings as to this claim is granted.

V. Religious Land Use and Institutionalized Persons Act Claim (Count V)

Belle Plaine seeks judgment on the pleadings as to TST's claim that Belle Plaine violated the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. § 2000cc, arguing that TST fails to sufficiently allege any facts that entitle TST to

protection under RLUIPA. TST counters that, because the permit issued by Belle Plaine is an easement, the jurisdictional requirement of RLUIPA is satisfied and TST is entitled to relief.

To state a claim under RLUIPA, a party must plead facts that trigger the jurisdictional requirements identified in the statute. *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1225 (11th Cir. 2004); *Prater v. City of Burnside*, 289 F.3d 417, 433 (6th Cir. 2002); *Daywitt v. Minn. Dep't of Human Servs.*, No. 16-cv-2541 (WMW/LIB), 2017 WL 9249422, at *8 (D. Minn. Feb. 6, 2017), *report and recommendation adopted in part by*, 2017 WL 2265078 (D. Minn. May 23, 2017). As relevant to TST's allegations here, under RLUIPA, jurisdiction is invoked when a "substantial burden is imposed *in the implementation of a land use regulation or system of land use regulations*, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved." 42 U.S.C. § 2000cc(2)(C) (emphasis added); *Riverside Church v. City of St. Michael*, 205 F. Supp. 3d 1014, 1033 (D. Minn. 2016). A "land use regulation" is a "zoning or landmarking law . . . that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an *ownership, leasehold, easement, servitude, or other property interest* in the regulated land or a contract or option to acquire such an interest." 42 U.S.C. § 2000cc-5(5) (emphasis added). A government entity implements a land use regulation "only when it acts pursuant to a 'zoning or landmarking law' that limits the manner in which a claimant may develop or use property in which the claimant has an interest." *Prater*, 289 F.3d at 434.

TST argues that, because the permit issued by Belle Plaine pursuant to Resolution 17-020 was an easement, TST qualifies for relief under RLUIPA. An easement is "an interest in land possessed by another which entitles the grantee of the interest to a limited use or enjoyment of that land." *Scherger v. N. Nat. Gas Co.*, 575 N.W.2d 578, 580 (Minn. 1998). An easement may arise in one of three ways: as an express easement, as an easement by prescription, or as an implied easement. An express easement arises when "[t]he written instrument creating the easement . . . defines the scope and extent of the interest in land." *Larson v. State*, 790 N.W.2d 700, 704 (Minn. 2010); *Hedderly v. Johnson*, 44 N.W. 527, 528–29 (1890) (explaining that an identification of the land subject to the easement and the intention of the parties is sufficient to establish an express easement). An easement by prescription arises when the use of property has been "actual, open, continuous, exclusive, and hostile." *Rogers v. Moore*, 603 N.W.2d 650, 657 (Minn. 1999). An implied easement arises when there is separation of title, a use giving rise to the easement that has continued for so long that it was intended to be permanent, and the easement is necessary for the enjoyment of the land. *Clark v. Galaxy Apartments*, 427 N.W.2d 723, 725–26 (Minn. Ct. App. 1988).

TST alleges no facts that plausibly claim its one-year revocable permit created an easement. TST does not allege any facts to support the possession of either an easement by prescription or an implied easement. At most, TST alleges that it held an express easement before its permit was terminated. But TST nonetheless fails to allege sufficient facts to identify the Belle Plaine permit as such. Moreover, the Court's research has not identified any RLUIPA case in which an easement has served as the basis for a protectable

property interest. Nor has TST cited any. TST also cites no legal precedent, binding or otherwise, in which a city-issued revocable park permit was held to be an easement. In sum, no legal authority supports TST's invitation to extend RLUIPA to the present facts.[3]

Moreover, TST fails to allege any facts that Belle Plaine acted pursuant to any zoning or landmarking law. The complaint repeatedly alleges violations of RLUIPA. But the complaint does not identify any zoning or landmarking law under which Belle Plaine acted when it passed Resolution 17-090. *Prater*, 289 F.3d at 434 (finding RLUIPA inapplicable when a "[c]ity's decision regarding the fate of [a] roadway was . . . not based upon any zoning or landmarking law restricting the development or use of [a] Church's own private property"). Indeed, TST alleges no facts that support its assertion that a substantial burden on TST's religious exercise was imposed by Belle Plaine's implementation of any land use regulation nor any other facts that would invoke RLUIPA's protections. And TST alleges no other valid ownership interest in the land.

Belle Plaine's motion for judgment on the pleadings as to this claim is granted.

[3] The intention of RLUIPA, as prescribed by Congress, is to address frequent discrimination against churches because "[z]oning codes frequently exclud[ed] churches in places where [zoning codes] permit theaters, meeting halls, and other places where large groups of people assemble for secular purposes." *Midrash Sephardi*, 366 F.3d at 1231 n.14 (quoting 146 Cong. Rec. S7774–01, *S7774 (2000) (joint statement of Sens. Hatch and Kennedy on the Religious Land Use and Institutionalized Person Act of 2000)). RLUIPA "does not provide religious institutions with immunity from land use regulation, nor does it relieve religious institutions from applying for . . . special permits . . . where available without discrimination or unfair delay." *Id.* at 1235 n.17 (quoting Joint Statement, at *S7776). In keeping with the plain language of RLUIPA and as expressed in the legislative record, which appears to have anticipated *gatherings*, TST has not demonstrated that temporary property interests in public spaces are covered by RLUIPA.

VI. Promissory-Estoppel Claim (Count VII)

Belle Plaine also seeks judgment on the pleadings as to TST's promissory-estoppel claim, arguing that Minnesota Statutes Section 412.201 precludes the enforcement of promissory estoppel as to Belle Plaine.

Promissory estoppel "allows courts to enforce a promise on equitable grounds, even where parties did not enter into a contract." *City of St. Joseph v. Sw. Bell Tel.*, 439 F.3d 468, 477 (8th Cir. 2006). To state a promissory-estoppel claim, TST must allege: "(1) a promise; (2) [detrimental reliance] on the promise; (3) [the] promisor could reasonably foresee the precise action the promisee took in reliance; and (4) injustice can only be avoided by the enforcement of the promise." *Id*; *accord Cohen v. Cowles Media Co.*, 479 N.W.2d 387, 391 (Minn. 1992). A promissory-estoppel claim fails if the plaintiff does not establish each of the four elements. *City of St. Joseph*, 439 F.3d at 477.

The facts alleged by TST state a promissory-estoppel claim. First, TST alleges that on March 29, 2017, Belle Plaine issued TST a "permit to erect a display that honors veterans in a limited public forum." TST alleges that this permit, issued pursuant to Resolution 17-020 to allow private parties "access to Veterans Memorial Park for the purpose of erecting displays," is a promise. As alleged, this promise is clear and definite. *Cohen*, 479 N.W.2d at 391. Therefore, TST sufficiently alleges that Belle Plaine promised to permit TST to erect and maintain a display in Veterans Memorial Park for up to one year.

As to the second and third elements, TST alleges that Belle Plaine "intended to and in fact induced [TST] to rely on that promise in obtaining a permit and designing and

constructing a veteran's memorial of approved design that honored veterans in a limited public forum." TST also alleges that it "[d]etrimentally relied on [Belle Plaine's] promise and expended financial resources, time and talent to design and construct the approved veteran's memorial display in full performance of its obligations to [Belle Plaine]." And in doing so, TST acquired liability insurance as required by Resolution 17-020. The allegations adequately state that Belle Plaine intended to induce TST's subsequent reliance on that promise to its own detriment. *Id*. (observing that "the promisor must have intended to induce reliance on the part of the promisee, and such reliance must have occurred to the promisee's detriment"). Based on these pleadings, TST sufficiently alleges that Belle Plaine should have reasonably expected that TST would expend time and resources to construct a display after receiving approval and that TST in fact expended such time and resources.

Finally, TST alleges sufficient facts that enforcement of Belle Plaine's promise may be necessary to avoid injustice. TST alleges that Belle Plaine violated its promise and breached its contractual agreement with TST by passing the rescission Resolution that prohibited TST from installing its display in the limited public forum and that "[e]nforcement of [Belle Plaine's] promise is required to prevent an injustice, including but not limited to money damages for expenses reasonably incurred in designing and constructing [TST's] veterans memorial display." These allegations satisfy the fourth element of a promissory-estoppel claim.

The cases that Belle Plaine cites are inapposite. *See Plymouth Foam Prods., Inc. v. City of Becker*, 120 F.3d 153 (8th Cir. 1997); *Snyder v. City of Minneapolis*, 441 N.W.2d

781 (Minn. 1989). Both *Plymouth* and *Snyder* involved an equitable-estoppel claim, not a promissory-estoppel claim. Belle Plaine identifies no case law that supports the analogous treatment of equitable-estoppel claims and promissory-estoppel claims. *See Bracewell v. U.S. Bank Nat'l Ass'n*, 748 F.3d 793, 796 (8th Cir. 2014) (distinguishing between an equitable-estoppel claim and a promissory-estoppel claim); *Del Hayes & Sons, Inc. v. Mitchell*, 230 N.W.2d 588, 283–84 (Minn. 1975) (same). Accordingly, the cases on which Belle Plaine relies do not apply to the circumstances here.

Belle Plaine also argues that Minnesota Statutes Section 412.201 "preclude[s] a claim that any representations made to [TST] are enforceable against [Belle Plaine] under the equitable theory of promissory estoppel." Minnesota Statutes Section 412.201 governs when and who may contractually bind a city: "Every contract, conveyance, license, or other written instrument shall be executed on behalf of the city by the mayor and clerk, with the corporate seal affixed, and only pursuant to authority from the council." Minn. Stat. § 412.201; *City of Geneseo v. Utils. Plus*, 533 F.3d 608, 616 (8th Cir. 2008) ("Minnesota law expressly limits the authority of any agent to contractually bind a city, county, or . . . a municipal agency without council or board approval . . . ." (citing Minn. Stat § 412.201)). Section 412.201 precludes the *existence* of a valid contract under these circumstances. But to assert a promissory-estoppel claim, a valid contract is not required. Promissory estoppel "allows courts to enforce a promise on equitable grounds" in situations when "parties did not enter into a contract." *City of St. Joseph*, 439 F.3d at 477. Belle Plaine has not demonstrated that dismissal of TST's promissory-estoppel claim is warranted on this basis.

For these reasons, Belle Plaine's motion for judgment on the pleadings as to TST's promissory-estoppel claim is denied.

ORDER

Based on the foregoing analysis, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED**:

1. Defendants' motion for judgment on the pleadings, (Dkt. 27), is **GRANTED IN PART AND DENIED IN PART** as addressed herein.

2. Counts I through VI and VIII through X are **DISMISSED WITHOUT PREJUDICE**.

3. Plaintiff The Satanic Temple's motion for judgment on the pleadings as to Count II, (Dkt. 22), is **DENIED**.

Dated: July 31, 2020

s/Wilhelmina M. Wright
Wilhelmina M. Wright
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

The Satanic Temple, Plaintiff, v. City of Belle Plaine, Minnesota, Defendant.	Court File No. 19-cv-1122 (WMW/LIB) **ORDER**

This matter comes before the undersigned United States Magistrate Judge pursuant to a general assignment made in accordance with the provisions of 28 U.S.C. § 636, and upon Defendant's Motion for Protective Order, [Docket No. 50], Plaintiff's Motion to Compel, [Docket No. 57], and Plaintiff's Corrected Motion to Amend Scheduling Order and for Leave to Amend the Complaint; or, Alternatively, for a Contested Non-Suit, [Docket No. 64].

For the reasons discussed below, the Court **GRANTS in part** and **DENIES in part** Defendant's Motion for Protective Order, [Docket No. 50], the Court **GRANTS in part** and **DENIES in part** Plaintiff's Motion to Compel, [Docket No. 57], and the Court **DENIES** Plaintiff's Corrected Motion to Amend Scheduling Order and for Leave to Amend the Complaint; or, Alternatively, for a Contested Non-Suit, [Docket No. 64].

I. BACKGROUND AND RELEVANT FACTS

On April 25, 2019, Plaintiff The Satanic Temple initiated the present case by filing its Complaint in this Court. [Docket No. 1]. Plaintiff named as Defendants City of Belle Plaine (the "City"), City Mayor Christopher G. Meyer, City Council member Ben Stier, City Council member

Cary Coop, City Council member Paul Chard, and City Council member Theresa McDaniel in their individual and official capacities.[1] (Id. ¶¶ 6–12).

In its original Complaint, Plaintiff alleges that in August 2016, a statue of a soldier kneeling before a Christian cross, known as "Joe," was placed in the Belle Plaine Veterans Memorial Park (the "Park"), and it was removed six months later after the City was threatened with litigation because Joe's presence on public property allegedly violated the Establishment Clause of the First Amendment. (Id. ¶¶ 27–28).

On February 2, 2017, the Belle Plaine City Council (the "City Council") enacted Resolution 17-020 (the "Enacting Resolution"), which designated "a limited public forum in Veterans Memorial Park for the express purpose of allowing individuals or organizations to erect and maintain privately owned displays that honor and memorialize living or deceased veterans, branch [sic] of military and Veterans organizations affiliated with Belle Plaine." (Id. ¶¶ 17). The Enacting Resolution stipulated that applications to erect a display within the limited public forum in the Park be submitted to the City Administrator, set parameters for the design and placement of permitted displays, placed the burden of maintaining the displays on the applicants, required applicants to carry $1,000,000 liability coverage on the displays, disassociated the speech of the applicants from the City itself, and limited the duration of the displays to one year with an option to reapply. (Id. ¶¶ 18–25). In addition, the Enacting Resolution "provided that display permits could be terminated on ten days' written notice by the City Administrator '[i]n the event the City desires to close the limited public forum or rescind this policy.'" (Id. ¶ 26) (alteration in original) (quoting Ex. 1 [Docket No. 1-1], at 1–3).

[1] Plaintiff only names Ms. McDaniel in her individual capacity. (Id. ¶ 12).

On April 8, 2017, Joe was erected once again in the Park pursuant to the Enacting Resolution. (Id. ¶ 28). On February 28, 2017, Plaintiff submitted an application to erect a display in the limited public forum. (Id. ¶ 29). On March 29, 2017, that application was approved by City Administrator Michael J. Votca, and Plaintiff received a permit to erect its display in the Park for one year. (Id.). Plaintiff constructed its display, (the "Display"), obtained the required liability insurance, notified the City Administrator that the Display was complete, and asked for assistance in its installation, which was agreed to. (Id. ¶ 30).

Nevertheless, prior to installation of the Display, the City Council unanimously passed Resolution 17-090 (the "Recission Resolution") which rescinded the Enacting Resolution. (Id. ¶ 31). At the time the Recission Resolution was approved, only two permits had been granted: one for Joe and one for Plaintiff's Display. (Id. ¶ 32). The Recission Resolution "stated that 'the City Council has determined that allowing privately-owned memorials of displays in its Park no longer meets the intent or purpose of the Park.'" (Id. ¶ 35) (quoting Ex. 5 [Docket No. 1-1], at 10). The Rescinding Resolution also "stated that 'the City Council has also determined that the continuation of the limited public forum may encourage vandalism in the Park, reduce the safety, serenity, and decorum of the Park, unnecessarily burden City staff and law enforcement, and negatively impact the public's health, safety and welfare.'" (Id. ¶ 36) (quoting Ex. 5 [Docket No. 1-1], at 10). However, Plaintiff alleges that there had been no vandalism, complaints, or safety problems, and at the time the Rescinding Resolution was passed, there were no displays in the Park because the Belle Plaine Veterans Club had voluntarily removed Joe at Defendants' request in advance of the Rescinding Resolution. (See, Id. ¶¶ 32–34, 37; see also, Id. ¶¶ 38–39).

Plaintiff alleges that the reasons for passing the Rescinding Resolution were pretextual to discriminate against Plaintiff, and that the City explained in a July 18, 2017, press release that the

"limited public forum had been terminated because of free speech controversy between religious and non-religious communities that had attracted regional and national attention, promoted divisiveness among residents of Belle Plaine, and portrayed the City in a negative light." (Id. ¶ 40–41).

Based on those factual allegations, Plaintiff's original Complaint asserted ten causes of action against Defendants. Count I asserted a Free Exercise Clause claim, Count II asserted a free speech claim, Count III asserted an equal protection claim, Count IV asserted a Contract Clause claim, Count V asserted a claim under the Religious Land Use and Institutionalized Persons Act of 2000, Count VI asserted a breach of contract claim, Count VII asserted a promissory estoppel claim; Count VIII asserted an impairment of contract claim under the Minnesota Constitution, Count IX asserted a free exercise of religion claim under the Minnesota Constitution, and Count X asserted a freedom of speech and association claim under the Minnesota Constitution. (Id. ¶¶ 46–134).

On August 6, 2019, the Parties filed their Rule 26(f) Report. [Docket No. 14]. In that Report, the Parties indicated that they "agree[d] that this is not a heavily document intensive case." (Id. at 6). The Parties also indicated that they had "both stated their intention to move for judgment on the pleadings," and they sought "to coordinate a schedule for presenting cross-motions for judgment on the pleadings to the Court." (Id. at 5–6).

On August 15, 2019, this Court issued its Pretrial Scheduling Order for this case. [Docket No. 18]. Pursuant to the Pretrial Scheduling Order, the deadline for motions to amend the pleadings was October 15, 2019, the deadlines for expert disclosures were June 30, 2020, and August 31, 2020, the deadline for discovery was December 4, 2020, the non-dispositive motion heard-by

deadline was January 5, 2021, the deadline for dispositive motions is February 5, 2021, and the trial ready date is June 5, 2021. (Id.).

On December 31, 2019, the Parties filed cross-motions for judgment on the pleadings. [Docket Nos. 22, 27]. Plaintiff sought judgment on the pleadings in reference to its First Amendment free speech claim asserted as Count II of its original Complaint, and Defendants sought judgment on the pleadings in reference to each of Plaintiff's claims and dismissal of Plaintiff's original Complaint in its entirety. (Id.).[2]

On July 31, 2020, Judge Wright issued an Order granting in part and denying in part Defendants' motion for judgment on the pleadings and denying Plaintiffs' motion for judgment on the pleadings. [Docket No. 46]. Judge Wright granted Defendants judgment on the pleadings for Counts I–VI and VIII–X, but denied judgment on the pleadings for Plaintiff's promissory estoppel claim alleged as Count VII. (Id.). Counts I–VI and VIII–X were dismissed without Prejudice. (Id. at 23). All claims against the individual Defendants were dismissed, and only the City remains as a Defendant in this case. (Id. at 6–7).

In reference to the promissory estoppel claim, Judge Wright found that Plaintiff has sufficiently alleged that: the permit to erect a display in the Park that the City issued to Plaintiff was a clear and definite promise; Plaintiff detrimentally relied on that promise by constructing the Display and obtaining liability insurance; the City should have reasonably expected that Plaintiff would expend time and resources to construct the Display; and enforcement of the City's promise may be necessary to avoid injustice because Plaintiff alleges that the City violated its promise by passing the Rescinding Resolution, and as a result, Plaintiff alleges it suffered money damages.

[2] On February 15, 2020, Plaintiff's current counsel, Mr. Juran, filed his Notice of Appearance on CM/ECF, and Plaintiff's previous counsel filed their Notices of Withdrawal. [Docket Nos. 36–38]. Plaintiff's other current counsel, Mr. Kezhaya, filed a motion for admission pro hac vice on February 19, 2020. [Docket No. 41].

On October 15, 2020, Plaintiff served its first set of discovery requests on the City. (Ex. 15 [Docket No. 70-1], at 86–96).[3]

On November 4, 2020, Plaintiff indicated its intention to amend its Complaint and requested the City's position on amending the scheduling order to set the deadline to amend the pleadings out two months from that date, as well as, to allow for an additional six months of discovery. (Ex. 5 [Docket No. 70-1], at 38).

On November 6, 2020, Plaintiff noticed the deposition of City Council Member Cary Coop to take place on the morning of November 13, 2020, the deposition of City Attorney Robert J. V. Vose to take place on the afternoon of November 13, 2020, the deposition of City Mayor Christopher G. Meyer to be held on November 17, 2020, and a Rule 30(b)(6) deposition of the City to take place on November 19, 2020. (Ex. 1[Docket No. 53-1], at 8).

Also on November 6, 2020, defense counsel objected to Plaintiff taking depositions of the Mayor or any City Council members and stated that the City would not consent to such depositions. (Ex. 2 [Docket No. 53-1], at 13–14). On November 9, 2020, defense counsel objected to Plaintiff taking the City Attorney's deposition and stated that the city would not consent to such a deposition. (Ex. 3 [Docket No. 53-1], at 18]). Defense counsel also objected to the scope of the noticed Rule 30(b)(6) deposition and proposed that it be narrowed, and defense counsel stated that the City would not stipulate to extending the deadlines in the Pretrial Scheduling Order. (Id. at 17–19).

On November 11, 2020, Plaintiff's counsel stated that Plaintiff would not withdraw the proposed deposition notices, but that it would move the depositions of the Mayor, City Council member Coop, and the City Attorney to December 1, 2020. (Ex. 5 [Docket No. 53-1], at 30).

[3] Neither Party has informed this Court when the City responded to Plaintiff's discovery requests.

Plaintiff's counsel also stated his belief that the Parties were at an impasse on the issue of Rule 30(b)(6) deposition topics. (Id.).

II. DEFENDANT'S MOTION FOR PROTECTIVE ORDER, [Docket No. 50], and PLAINTIFF'S MOTION TO COMPEL [Docket No. 57]

On November 30, 2020, Defendant filed its Motion for Protective Order. [Docket No. 50]. Defendant moves this Court for a protective order: (1) prohibiting Plaintiff from taking a deposition of the City Attorney, Robert J. V. Vose; (2) prohibiting Plaintiff from taking depositions of the City Mayor, Christopher G. Meyer, and City Council members; and (3) prohibiting a Rule 30(b)(6) deposition of the City after the discovery deadline, or in the alternative, limiting the scope of matters for examination in Plaintiff's notice of Rule 30(b)(6) deposition to those matters that are relevant to Plaintiff's promissory estoppel claim. (Mem. in Supp. [Docket No. 52], at 1–2).[4]

On December 1, 2020, Plaintiff filed its Motion to Compel. [Docket No. 57]. Plaintiff seeks an Order of this Court compelling: (1) a deposition of the City Attorney; (2) the depositions of Mayor Meyer and City Council member Cary Coop; (3) a Rule 30(b)(6) deposition of the City on twenty-four specified topics; and (4) Defendant to amend and supplement its Responses to Request for Production of Documents Nos. 5, 6, 8, and 15. (Mem. In Supp. [Docket No. 58]).[5]

A. Standard of Review

Federal Rule of Civil Procedure 26(b)(1) provides that "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount

[4] Defendant requests an award of expenses, including attorneys' fees, incurred in bringing its motion for protective order. (Def.'s Mot. for Protective Order [Docket No. 50]; Mem. in Supp. [Docket No. 52]). The Court **DENIES** Defendant's request for expenses and attorneys' fees.

[5] Plaintiff also requests an award of sanctions, including attorneys' fees incurred in bringing its motion to compel, as well as, in responding to Defendant's motion for protective order. (See, Plf.'s Mot. to Compel [Docket No. 57]; Mem. in Supp. [Docket No. 58]; Mem. in Opp'n [Docket No. 67]). The Court **DENIES** Plaintiff's requests for sanctions and attorneys' fees.

in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(1). Courts construe Rule 26(b)(1) broadly. Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978); see also, Hofer v. Mack Trucks, Inc., 981 F.2d 377, 380 (8th Cir. 1992) (Rule 26 "is liberal in scope and interpretation, extending to those matters which are relevant"). However, the scope of discovery is intended to focus on the actual claims or defenses that are at issue in the litigation. See e.g., Sierrapine v. Refiner Prods. Mfg., Inc., 275 F.R.D. 604, 609 (E.D. Cal. 2011). As such, the party seeking discovery is required to make a threshold showing of relevance before production of information is required. Hofer, 981 F.2d at 380.

In addition, "even if relevant, discovery is not permitted where no need is shown, or compliance would be unduly burdensome, or where harm to the person from whom discovery is sought outweighs the need of the person seeking discovery of the information." Miscellaneous Docket Matter #1 v. Miscellaneous Docket Matter #2, 197 F.3d 922, 925 (8th Cir. 1999) (quoting Micro Motion, Inc. v. Kane Steel Co., 894 F.2d 1318, 1323 (Fed. Cir. 1990)). "The party resisting production bears the burden of establishing lack of relevancy or undue burden." St. Paul Reinsurance Co. v. Com. Fin. Corp., 198 F.R.D. 508, 511 (N.D. Iowa 2000) (citations omitted).

"On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery." Fed. R. Civ. P. 37(a)(1). Federal Rule of Civil Procedure 37(a)(3) provides for various motions to compel disclosure or compel discovery depending on the failure of the other party. Specifically, the Court may compel a discovery response if "a party fails to produce documents . . . as requested under Rule 34." Fed. R. Civ. P. 37(a)(3)(B)(iv).

A party generally, with certain exceptions, may depose any person without leave from the Court. Fed. R. Civ. P. 30(a)(1); but see, Fed. R. Civ. P. 30(a)(2) (exceptions when leave is required). However, Rule 26(c) allows the Court, upon a showing of good cause, to "issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including . . . forbidding the disclosure or discovery." Fed. R. Civ. P. 26(c)(1)(A). "The party seeking the order . . . bears the burden of establishing the requisite 'good cause.'" Northbrook Digital, LLC v. Vendio Servs., 625 F. Supp. 2d 728, 734 (D. Minn. 2008). Nevertheless, the party seeking discovery is required to make a threshold showing of relevance before production of information is required. Hofer, 981 F.2d at 380.

B. Analysis

As already noted, Defendant moves this Court for a protective order: (1) prohibiting Plaintiff from taking a deposition of the City Attorney; (2) prohibiting Plaintiff from taking depositions of Mayor Meyer and City Council members; and (3) prohibiting a Rule 30(b)(6) deposition of the City after the discovery deadline, or in the alternative, limiting the scope of matters for examination in Plaintiff's notice of Rule 30(b)(6) deposition. (Def.'s Mot. for Protective Order [Docket No. 50]; Mem. in Supp. [Docket No. 52], at 1–2).

Plaintiff seeks an Order of this Court compelling: (1) a deposition of the City Attorney; (2) the depositions of Mayor Meyer and City Council member Coop; (3) a Rule 30(b)(6) deposition of the City on twenty-four specified topics; and (4) Defendant to amend and supplement its Responses to Request for Production of Documents Nos. 5, 6, 8, and 15. (Plf.'s Mot. to Compel [Docket No. 57]; Mem. in Supp. [Docket No. 58]).

i. Deposition of the City Attorney

Plaintiff asserts that the purpose of deposing the City Attorney is to determine the motives behind adopting the Enacting Resolution and the Rescinding Resolution. (See, e.g., Mem. in Supp. [Docket No. 58], at 6, 9; Mem. in Opp'n [Docket No. 67], at 12–13). Plaintiff contends that a deposition of the City Attorney is crucial because "[o]nly the City Attorney can speak to the real intent behind the Enacting Resolution," and "[t]he same is true for the Rescinding Resolution." (Mem. in Supp. [Docket No. 58], at 9). Plaintiff also contends that this information "will shed light on whether discrimination was at play." (Id. at 6).

The only remaining claim in the present case is Plaintiff's promissory estoppel claim. "Promissory estoppel is an equitable doctrine that "impl[ies] a contract in law where none exists in fact." Martens v. Minn. Mining & Mfg. Co., 616 N.W.2d 732, 746 (Minn. 2000) (quoting Grouse v. Grp. Health Plan, Inc., 306 N.W.2d 114, 116 (Minn. 1981)). As such, promissory estoppel is quasi-contractual in nature. See, Grouse, 306 N.W.2d at 116 (noting promissory estoppel is a principle of contract law). "A claim for promissory estoppel has three elements: (1) "a clear and definite promise was made;" (2) "the promisor intended to induce reliance and the promisee in fact relied to his or her detriment;" and (3) "the promise must be enforced to prevent injustice." Martens, 616 N.W.2d at 746.

Plaintiff contends that "[t]he 'injustice' prong of promissory estoppel invites the judicial question of why the City made its promise and why the City did not fulfill its promise." (Mem. in Supp. [Docket No. 58], at 3). Plaintiff further contends that "[i]n a promissory estoppel case against a city, a plaintiff must prove more than that the City broke a clear and definite promise; the Plaintiff must also adduce evidence of 'some degree of malfeasance' or 'bad faith.'" (Mem. in Opp'n [Docket No. 67], at 5–6).

Plaintiff conflates promissory estoppel with equitable estoppel. Indeed, Plaintiff cites to City of N. Oaks v. Sarpal, 797 N.W.2d 18 (Minn. 2011), in support of its contention that it is required to show bad faith to prove its promissory estoppel claim. (Mem. in Supp. [Docket No. 58], at 3; Mem. in Opp'n [Docket No. 67], at 5). However, Sarpal involved a claim of equitable estoppel.[6] 797 N.W.2d 18. As already noted by Judge Wright, cases involving equitable estoppel claims "do not apply to the circumstances here." (See, Order [Docket No. 46], at 21–22); see also, Bracewell v. U.S. Bank Nat. Ass'n, 748 F.3d 793, 796 (8th Cir. 2014) (alteration in original) (quoting 28 Am. Jur.2d Estoppel & Waiver § 34 (2014)) ("As one treatise summarizes the difference, '[a] claim is more appropriately analyzed under the doctrine of promissory estoppel, not equitable estoppel, where representations upon which the plaintiff allegedly relied are more akin to statements of future intent than past or present fact.'").

The third "injustice" prong of promissory estoppel asks whether the promise must be enforced to prevent injustice. Martens, 616 N.W.2d at 746. "[T]he test is not whether the promise should be enforced to do justice, but whether enforcement is required to prevent an injustice." Cohen v. Cowles Media Co., 479 N.W.2d 387, 391 (Minn. 1992). "[T]his is purely a question of law for the court and involves public policy considerations." Kattke v. Indep. Order of Foresters, No. 00-276ADM/AJB, 2001 WL 557599, at *4 (D. Minn. 2001), aff'd, 30 Fed. App'x 660 (8th Cir. 2002); see also, Cohen, 479 N.W.2d at 391 ("[T]his is a legal question for the court, as it involves a policy decision."); Feris v. Bodycote Lindberg Corp., No. 01-1689(MJD/JGL), 2003 WL 21517363, at *4 (D. Minn. June 30, 2003) ("The Court must consider the reasonableness of

[6] In Sarpal, the Minnesota Supreme Court stated that the four required elements to establish equitable estoppel against a government entity are (1) "there must be 'wrongful conduct' on the part of an authorizing government agent;" (2) "the party seeking the equitable relief must reasonably rely on the wrongful conduct;" (3) "the party must incur a unique expenditure in reliance on the wrongful conduct;" and (4) "the balance of the equities must weigh in favor of estoppel." 797 N.W.2d at 25 (emphasis added). The Minnesota Supreme Court also stated that "wrongful conduct is the most important element of equitable estoppel," and "the wrongful conduct element require[s] some degree of malfeasance." Id. (emphasis added). The Minnesota Supreme Court did not discuss promissory estoppel in Sarpal.

the promisee's reliance and weigh the public policies in favor of enforcing bargains and preventing unjust enrichment."); Meriwether Minn. Land & Timber v. State, 818 N.W.2d 557, 568–69 (Minn. Ct. App. 2012) (weighing public policy interests to determine whether enforcement of promise was required to prevent injustice).

Here, the "injustice" to Plaintiff is the time and resources that Plaintiff expended in reliance on the City's promise, it is not any alleged discrimination. See, Olson v. Synergistic Techs. Bus. Sys., Inc., 628 N.W.2d 142, 152 (Minn. 2001) ("[P]romissory estoppel is an equitable form of action based on good-faith reliance."); see also, Doll v. U.S. W. Commc'ns, Inc., 85 F. Supp. 2d 1038, 1045 (D. Colo. 2000) (noting promissory estoppel claim did not rely on the improper motive at issue in wrongful discharge claims). The third prong of Plaintiff's promissory estoppel claim in the present case simply asks whether public policy dictates that the City's promise should be enforced to prevent the harm caused to Plaintiff by expending resources in reliance on that promise. Accordingly, City's motives behind adopting the Enacting Resolution and the Rescinding Resolution are not relevant to the public policy considerations involved in the third "injustice" prong of Plaintiff's promissory estoppel claim.

The threshold inquiry with regard to discovery issues is whether the moving party seeks discoverable material. Prokosch v. Catalina Lighting, Inc., 193 F.R.D. 633, 635 (D. Minn. 2000) (citing Shelton v. Am. Motors, 805 F.2d 1323, 1326 (8th Cir. 1986)). Pursuant to Federal Rule of Civil Procedure 26(b)(1), the scope of discoverable material is limited to that which is relevant to the parties' claims or defenses. See, e.g., Mallak v. Aitkin Cty., No. 13-cv-2119 (DWF/LIB), 2016 WL 8607391, at *6 (D. Minn. June 30, 2016), aff'd, 2016 WL 8607392 (D. Minn. Sept. 29, 2016) (citing Sierrapine, 275 F.R.D. at 609). And the party seeking discovery is required to make a

threshold showing of relevance before production of information is required. Hofer, 981 F.2d at 380.

Here, as already noted, improper motive is not an element of promissory estoppel. Moreover, the third "injustice" prong of Plaintiff's promissory estoppel claim does not hinge in any way on the motives behind adopting the Enacting Resolution or the Rescinding Resolution. Simply put, why the City broke its promise is not relevant to Plaintiff's promissory estoppel claim. As such, the Court finds that the information sought by a deposition of the City Attorney is not relevant to any claims or defenses in this case.

Therefore, Defendant's Motion for Protective Order, [Docket No. 50], is **GRANTED** to the extend it seeks a protective order prohibiting Plaintiff from taking a deposition of the City Attorney, and Plaintiff's Motion to Compel, [Docket No. 57], is **DENIED** to the extent that it seeks an Order of this Court compelling a deposition of the City Attorney.

ii. Depositions of Mayor Meyer and City Council members

Plaintiff asserts that the purpose of deposing Mayor Meyer and City Council member Coop is to determine the motives of the City behind adopting the Enacting Resolution and the Rescinding Resolution. (See, e.g., Mem. in Supp. [Docket No. 58], at 1; Mem. in Opp'n [Docket No. 67], at 1–2).

As already noted, the City's motivations in adopting the Enacting Resolution and the Rescinding Resolution are not relevant to Plaintiff's promissory estoppel claim. Martens, 616 N.W.2d at 746; Grouse, 306 N.W.2d at 116. That claim is not contingent on why the City broke its promise; the "injustice" to Plaintiff is the time and resources that Plaintiff expended in reliance on the City's promise. See, e.g., Kattke, 2001 WL 557599, at *4; Cohen, 479 N.W.2d at 391.

Therefore, this Court finds that the information sought by the depositions of Mayor Meyer and City Council member Coop is not relevant to any claims or defenses in this case.

Accordingly, Defendant's Motion for Protective Order, [Docket No. 50], is **GRANTED** to the extend it seeks a protective order prohibiting Plaintiff from taking the depositions of Mayor Meyer and City Council members, and Plaintiff's Motion to Compel, [Docket No. 57], is **DENIED** to the extent that it seeks an Order of this Court compelling the depositions of Mayor Meyer and City Council member Coop.[7]

i. Rule 30(b)(6) Deposition

On November 6, 2020, Plaintiff noticed a Rule 30(b)(6) deposition of the City to take place on November 19, 2020. (Ex. 1 [Docket No. 53-1], at 5–7). On November 9, 2020, Defendant objected to the scope of the noticed Rule 30(b)(6) deposition and proposed that it be narrowed. (See, Ex. 3 [Docket No. 53-1], at 17–19). Specifically, Defendant agreed to a Rule 30(b)(6) deposition that was limited to the following topics: "Implementation of the limited public forum;" Plaintiff's "request to place a display;" "Meetings and participants constituting the internal decision-making about [Plaintiff's] request;" "Acceptance of [Plaintiff's] request to place the display;" and Defendant's "communications with [Plaintiff] between January 1, 2017, and July 1, 2017." (Id. at 17–18). On November 11, 2020, Plaintiff's counsel stated his belief that the Parties

[7] The Court reiterates that this decision is based solely on the fact that the information sought by these depositions is not relevant to the claims and defenses in this case. The Court does not find that these depositions are precluded because the City Mayor and City Council members are "high-ranking government officials." See, S.L. v. St. Louis Metro. Police Dep't Bd. of Comm'rs, No. 4:10-CV-2163 (CEJ), 2011 WL 1899211, at *2 (E.D. Mo. May 19, 2011) (collecting cases and finding that a case-by-case determination is required as there is no bright-line rule about who qualifies as a high-ranking government official, and noting that courts have applied the doctrine to "the Secretary of the Treasury, the former EPA administrator and former EPA regional administrator, the president of a county Board of Supervisors, mayors, the former chair of the Consumer Product Safety Commission, and the deputy White House Counsel. Officers who have not been found to be 'high-ranking officials' include the chief of police, and an assistant administrator with FEMA"); see also, Hensel v. Little Falls, MN, No. 12-cv-1160 (RHK/LIB) (D. Minn. May 17, 2013) (finding the mayor and city council members of Little Falls, Minnesota who served part-time were not "high-ranking" government officials and denying request for protective order on those grounds).

were at an impasse on the issue of Rule 30(b)(6) deposition topics. (Ex. 5 [Docket No. 53-1], at 30). On November 30, 2020, Defendant filed its present motion for protective order, [Docket No. 50], and on December 1, 2020, Plaintiff filed its present motion to compel, [Docket No. 57].

Defendant now contends that because Plaintiff previously rejected Defendant's proposal to limit the scope of the Rule 30(b)(6) deposition without making a reasonable counterproposal, Plaintiff allowed the December 4, 2020, discovery deadline to lapse without conducting the proposed Rule 30(b)(6) deposition. Therefore, Defendant argues that this Court should prohibit Plaintiff from taking an untimely Rule 30(b)(6) deposition. (See, Mem. in Supp. [Docket No. 52], at 21–24; Mem. in Opp'n [Docket No. 69], at 16–17). This Court disagrees.

Plaintiff noticed the Rule 30(b)(6) deposition to be taken before the December 4, 2020, discovery deadline. (See, Ex. 1[Docket No. 53-1], at 5–7). After Defendant refused to submit to the deposition as noticed and the Parties were unable to resolve the dispute, Plaintiff also filed its present motion to compel before the discovery deadline. (See, Plf.'s Mot. to Compel, [Docket No. 57]). Therefore, this Court concludes that Plaintiff's noticed Rule 30(b)(6) deposition was timely.

Defendant next argues, in the alternative, that this Court should limit the scope of the noticed Rule 30(b)(6) deposition to those topics which are relevant to Plaintiff's promissory estoppel claim, which Defendant contends are those five topics that it already agreed to on November 9, 2020, (See, Mem. in Supp. [Docket No. 52], at 24).

Plaintiff argues that all twenty-four of the noticed Rule 30(b)(6) topics are relevant to the promissory estoppel claim. (Mem. in Supp. [Docket No. 58], at 11–20; Mem. in Opp'n [Docket No. 67], at 16–17). Plaintiff's argument is again based on its erroneous assertion that the City's motives in adopting the Enacting Resolution and the Rescinding Resolution are relevant to its promissory estoppel claim. Indeed, Plaintiff specifically contends that "all of the matters are

plainly within the scope of discovery because all pertain to why the City made its promise and why the City broke its promise." (Mem. in Opp'n [Docket No. 67], at 16; see also, Mem. in Supp. [Docket No. 58], at 12–20). However, as already noted, Plaintiff's sole remaining claim is one for promissory estoppel, improper motive is not an element of promissory estoppel, and the third "injustice" prong of Plaintiff's promissory estoppel claim does not hinge in any way on the motives behind adopting the Enacting Resolution or the Rescinding Resolution. See supra.

This Court has reviewed each of Plaintiff's noticed Rule 30(b)(6) deposition topics except those to which Defendant has already agreed. The Court concludes that all of the topics are directly and exclusively aimed at determining the City's motives and whether the City discriminated against Plaintiff because of its religious views. Plaintiff expressly acknowledges as much in its briefing on this matter. (See, Mem. in Supp. [Docket No. 58], at 12–20; see also, Ex. 4 [Docket No. 70-1], at 28–30). As such, the Court finds that each of Plaintiff's noticed Rule 30(b)(6) deposition topics, excluding those already agreed to by Defendant, are not relevant to any claims or defenses in this case. See, Hofer, 981 F.2d at 380. Therefore, Plaintiff shall not inquire into such topics during the Rule 30(b)(6) deposition of the City. See, e.g., Wipers Recycling, LLC, No. 08-5019 (PJS/AJB), 2011 WL 13136272, at *12 (D. Minn. Mar. 21, 2011) (prohibiting inquiry about topics that were no longer relevant during Rule 30(b)(6) deposition). Nevertheless, Plaintiff shall be permitted to inquire into those topics that Defendant had already agreed are relevant to Plaintiff's promissory estoppel claim.[8] See, e.g., Id. (quoting Fed. R. Civ. P. 26(c)(1)) (allowing inquiry into relevant topics at Rule 30(b)(6) deposition where no showing that those "topics would cause 'annoyance, embarrassment, oppression, or undue burden or expense'").

[8] Because the Parties have already agreed those topics are relevant, it is not necessary for the Court to analyze their relevance here.

Accordingly, Defendant's Motion for Protective Order, [Docket No. 50], is **GRANTED in part** and **DENIED in part** to the extend it seeks a protective order prohibiting Plaintiff from taking a Rule 30(b)(6) deposition of the City, and Plaintiff's Motion to Compel, [Docket No. 57], is **GRANTED in part** and **DENIED in part** to the extent that it seeks an Order of this Court compelling a Rule 30(b)(6) deposition of the City on tweny-four specified topics. Defendant City of Belle Plaine is required, within fourteen (14) days of the date of this Order, to designate and produce a Rule 30(b)(6) deponent to testify to the following topics: (1) implementation of the limited public forum concept; (2) Plaintiff's request to place a display; (3) meetings and participants constituting the internal decision-making about Plaintiff's request; (4) acceptance of Plaintiff's request to place the Display; and (5) the City's communications with Plaintiff between January 1, 2017, and July 1, 2017.

ii. Requests for Production of Documents

> **REQUEST FOR PRODUCTION NO. 5:** All non-privileged documents that constitute, describe, reflect, or relate in any way to communications between Defendant and any non-party related to the allegations in Plaintiff's Complaint and Defendant's Answer, including but not limited to communications from or sent to the City Council, Planning Commission, Planning Department, zoning administrator, employees, and any other department in the City. The foregoing includes without limitation all recordings of interactions the City has had with any nonparty concerning the allegations in Plaintiff's Complaint or Defendant's Answer.
>
> **ANSWER:** The City objects to this Request to the extent it seeks documents that are not relevant to the remaining claim in this lawsuit. The Court dismissed all Plaintiff's claims except the promissory-estoppel claim against the City. See Satanic Temple v. City of Belle Plaine, ---F. Supp. 3d ---, 2020 WL 4382756 (D. Minn. July 31, 2020). That claim against the City involves three questions: "(1) Was there a clear and definite promise? (2) Did the promisor intend to induce reliance, and did such reliance occur? (3) Must the promise be enforced to prevent injustice?" Olson v. Synergistic Techs. Bus. Sys., Inc., 628 N.W.2d 142, 152 (Minn. 2001) (citing Ruud v. Great Plains Supply, Inc., 526 N.W.2d 369, 372 (Minn. 1995)). Subject to and without waiver of these objections, the City responds that non-privileged, responsive documents that relate to the remaining claim in the lawsuit will be produced.

(Mem. in Supp. [Docket No. 58], at 23–24).

> **REQUEST FOR PRODUCTION NO. 6:** All internal communications of the City relating in any way to the Display from January 1, 2017 to the present. "Internal communications" includes without limitation transcripts of any City Council meetings addressing the Display; audio or video recordings of any City Council meetings addressing the Permit; meeting minutes for any City Council meetings addressing the Permit.
>
> **Answer:** The City objects to this Request to the extent it seeks documents that are not relevant to the remaining claim in this lawsuit. The Court dismissed all Plaintiff's claims except the promissory-estoppel claim against the City. See Satanic Temple v. City of Belle Plaine, ---F. Supp. 3d ---, 2020 WL 4382756 (D. Minn. July 31, 2020). That claim against the City involves three questions: "(1) Was there a clear and definite promise? (2) Did the promisor intend to induce reliance, and did such reliance occur? (3) Must the promise be enforced to prevent injustice?" Olson v. Synergistic Techs. Bus. Sys., Inc., 628 N.W.2d 142, 152 (Minn. 2001) (citing Ruud v. Great Plains Supply, Inc., 526 N.W.2d 369, 372 (Minn. 1995)). Subject to and without waiver of these objections, the City responds that non-privileged, responsive documents that relate to the remaining claim in the lawsuit will be produced.

(Id. at 21).

> **REQUEST FOR PRODUCTION NO. 8:** All documents in Defendant's possession, which discuss or relate in any way to Plaintiff or its members. Without limiting the breadth of this request, Plaintiff particularly seeks Defendant's copies of Plaintiff's Permit Application, communications surrounding it, and any collateral statements about Plaintiff or its membership.
>
> **Answer:** The City objects to this Request to the extent it seeks documents that are not relevant to the remaining claim in this lawsuit. The Court dismissed all Plaintiff's claims except the promissory-estoppel claim against the City. See Satanic Temple v. City of Belle Plaine, ---F. Supp. 3d ---, 2020 WL 4382756 (D. Minn. July 31, 2020). That claim against the City involves three questions: "(1) Was there a clear and definite promise? (2) Did the promisor intend to induce reliance, and did such reliance occur? (3) Must the promise be enforced to prevent injustice?" Olson v. Synergistic Techs. Bus. Sys., Inc., 628 N.W.2d 142, 152 (Minn. 2001) (citing Ruud v. Great Plains Supply, Inc., 526 N.W.2d 369, 372 (Minn. 1995)). Subject to and without waiver of these objections, the City responds that non-privileged, responsive documents that relate to the remaining claim in the lawsuit will be produced.

(Id. at 21–22).

> **REQUEST FOR PRODUCTION NUMBER 15:** Produce any 19-cv-1122–memorandum of law in support of TST's motion to compel legal memoranda, notes, emails, or any other written document evidencing a communication between any member of the City Council and the City Attorney pertaining to any display or any expected display in the Park between August 1, 2016 and July 30, 2017 (i.e. including but not limited to Joe and the Display).
>
> **ANSWER:** The City objects to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege, work product doctrine or other applicable privileges and immunities. The City further objects to this Request to the extent it seeks documents that are not relevant to the remaining claim in this lawsuit. The Court dismissed all Plaintiff's claims except the promissory-estoppel claim against the City. See Satanic Temple v. City of Belle Plaine, ---F. Supp. 3d ---, 2020 WL 4382756 (D. Minn. July 31, 2020). That claim against the City involves three questions: "(1) Was there a clear and definite promise? (2) Did the promisor intend to induce reliance, and did such reliance occur? (3) Must the promise be enforced to prevent injustice?" Olson v. Synergistic Techs. Bus. Sys., Inc., 628 N.W.2d 142, 152 (Minn. 2001) (citing Ruud v. Great Plains Supply, Inc., 526 N.W.2d 369, 372 (Minn. 1995)).

(Id. at 9–10).

Request for Production of Documents No. 5 seeks communications between Defendant and any nonparties related to the allegations in Plaintiff's complaint. (Id. at 23). Request for Production of Document Nos. 6 and 7 seek the City's internal communications which relate in any way to the Display, Plaintiff, or Plaintiff's members. (Id. at 21–22). And Request for Production of Documents No. 15 seeks communications between the City Attorney and City Council members relating to any display or expected display in the Park. (Id. at 9–10).

Each of these Requests is clearly overbroad and seeks information that is not relevant to Plaintiff's sole remaining promissory estoppel claim. Again, Plaintiff's promissory estoppel claim does not hinge in any way on the motives behind adopting the Enacting Resolution or the Rescinding Resolution. See, supra. Although some limited portion of the discovery sought by these Requests may be marginally relevant to Plaintiff's promissory estoppel claim, these Requests also seek large amounts discovery that is plainly not relevant. See, e.g., McGinnis v. Soo Line R.R.

Co., No. 12-795 (DSD/JJK), 2013 WL 1748710, at *2 (D. Minn. Apr. 23, 2013) (citing WWP, Inc. v. Wounded Warriors Fam. Support, Inc., 628 F.3d 1032, 1039 (8th Cir. 2011)) ("Even if a request for production seeks relevant information, however, it may nonetheless be denied if it is overbroad."). Thus, Defendant is not required to produce any materials in response to Request for Production Nos. 5, 6, 8, or 15. See, Hofer, 981 F.2d at 380.

Therefore, Plaintiff's Motion to Compel, [Docket No. 57], is **DENIED** to the extent that it seeks an Order of this Court compelling Defendant to amend and supplement its Responses to Request for Production of Documents Nos. 5, 6, 8, and 15.

III. PLAINTIFF'S CORRECTED MOTION TO AMEND SCHEDULING ORDER AND FOR LEAVE TO AMEND THE COMPLAINT; OR, ALTERNATIVELY, FOR A CONTENSTED NON-SUIT [Docket No. 64]

On December 1, 2020, Plaintiff filed its original Motion to Amend the Scheduling Order and for Leave to Amend the Complaint; or, Alternatively, for a Contested Non-Suit. [Docket No. 56]. That motion was stuck as filed in error. On December 4, 2020, Plaintiff filed its corrected motion. (Plf.'s Corrected Mot. to Am. the Scheduling Order and for Leave to Am. the Compl.; or, Alternatively, for a Contested Non-Suit [Docket No. 64]). In its corrected motion, Plaintiff moves this Court for and Order amending the Pretrial Scheduling Order and granting leave for Plaintiff to amend its Complaint, or in the alternative, for an Order granting it a contested non-suit. (Mem. in Supp. [Docket No. 52], at 1–2).

A. Standard of Review

Rule 16(b) governs the Court's modification of pretrial scheduling orders and provides that "[e]xcept in categories of actions exempted by local rule, the" designated judge "must issue a scheduling order" which "must limit the time to join other parties, amend the pleadings, complete discovery, and file motions." Fed. R. Civ. P. 16(b). Pursuant to Federal Rule of Civil Procedure

16(b)(4) and Local Rule 16.3(b), a party who moves to modify a scheduling order must demonstrate good cause to do so.

Likewise, amending a complaint outside of the time frame established in a district court's scheduling order "requires a showing of good cause." See, Harris v. FedEx Nat'l LTL, Inc., 760 F.3d 780, 786 (8th Cir. 2014); see also, Popoalii v. Corr. Med. Servs., 512 F.3d 488, 497 (8th Cir. 2008) ("If a party files for leave to amend outside of the court's scheduling order, the party must show cause to modify the schedule."). "When a party seeks to amend a pleading after the scheduling deadline for doing so, the application of Rule 16(b)'s good-cause standard is not optional." Sherman v. Winco Fireworks, Inc., 532 F.3d 709, 716 (8th Cir. 2008).

"The primary measure of good cause is the movant's diligence in attempting to meet the order's requirements." Id. (citing Rahn v. Hawkins, 464 F.3d 813, 822 (8th Cir. 2006); Fed. R. Civ. P. 16(b), advisory committee note (1983 Amendment)). "The 'good cause' standard requires a demonstration that the existing schedule cannot reasonably be met despite the diligence of the party seeking the extension." Burris v. Versa Prods., Inc., No. 7-cv-3938 (JRT/JJK), 2009 WL 3164783, at *4 (D. Minn. Sept. 29, 2009). "While the prejudice to the nonmovant resulting from modification of the scheduling order may also be a relevant factor, generally, [a court] will not consider prejudice if the movant has not been diligent in meeting the scheduling order's deadlines." Id. (citing Bradford v. DANA Corp., 249 F.3d 807, 809 (8th Cir. 2001)).

Determining whether or not good cause through due diligence has been shown falls within the Court's broad discretion. See, Portz v. St. Cloud State Univ., No. 16-cv-1115 (JRT/LIB), 2017 WL 3332220, at *3 (D. Minn. Aug. 4, 2017).

B. Analysis

i. Pretrial Scheduling Order

Plaintiff seeks an Order of this Court amending the Pretrial Scheduling Order to extend the the deadline to amend pleadings, as well as, the discovery deadline and every other deadline in this case. (Plf.'s Corrected Mot. to Am. the Scheduling Order and for Leave to Am. the Compl.; or, Alternatively, for a Contested Non-Suit [Docket No. 64]).

Plaintiff asserts three reasons why this Court should find good cause exists to amend the Pretrial Scheduling Order. (See, e.g., Mem. in Supp. [Docket No. 65], at 2). Specifically, Plaintiff contends that the Pretrial Scheduling Order should be amended "to accommodate the timing of the order of dismissal, the replacement of [Plaintiff's] counsel of record, and the City's refusal to permit adequate discovery." (Id.).

As set forth above, pursuant to Federal Rule of Civil Procedure 16(b)(4) and Local Rule 16.3(b), a party who moves to modify a scheduling order must demonstrate good cause to do so. "The primary measure of good cause is the movant's diligence in attempting to meet the order's requirements." Sherman, 532 F.3d at 716–17. And "[t]he 'good cause' standard requires a demonstration that the existing schedule cannot reasonably be met despite the diligence of the party seeking the extension." Burris, 2009 WL 3164783, at *4. Here, Plaintiff has neither been diligent in attempting to meet the Pretrial Scheduling Order's existing deadlines, nor in seeking to amend the Pretrial Scheduling Order.

Plaintiff first argues that the Pretrial Scheduling Order should be amended to accommodate the timing of the July 31, 2020, Order on the Parties' cross-motions for judgment on the pleadings because the Parties did not engage in discovery while those motions were pending. (See, Mem. in Supp [Docket No. 65], at 2–7). Plaintiff asserts that it needs to find an expert to calculate its damages, but the July 31, 2020, Order "was entered too late for either party to timely engage experts." (Id. at 3, 7). However, the deadline for Plaintiff to disclose its experts was June 30, 2020.

(Pretrial Scheduling Order [Docket No. 18], at 4). With due diligence, Plaintiff could have moved to amend the expert disclosure deadline prior to its expiration once it became apparent the deadline would not be met, but Plaintiff did not do so. Rather, Plaintiff waited approximately five months to bring this motion. As such, Plaintiff has not shown good cause. See, Local Rule 16.3(d) (”Except in extraordinary circumstances, before the passing of a deadline a party moves to modify, the party must obtain a hearing date on the party's motion to modify the scheduling order.”); see also, E.E.O.C. v. Prod. Fabricators Inc. 285 F.R.D. 418, 421–22 (D. Minn. 2012) (finding no good cause where a motion to amend was brought three months after the expert deadlines had lapsed).

Plaintiff also asserts that the timing of the July 31, 2020, Order “left only four months on the time for discovery,” and Plaintiff contends that “[f]our months was not enough time to get this case trial-ready.” (Mem. in Supp. [Docket No. 65], at 3–4). Plaintiff further asserts that its “[c]ounsel has been busily investigating this case using every tool available,” “[b]ut four months just isn't enough time to obtain all needed evidence to prove religious discrimination.” (Id. at 6). Notably, Plaintiff does not specifically assert that four months is not enough time to obtain the evidence needed to prove promissory estoppel. (See, Mem. in Supp. [Docket No. 65]). Plaintiff's religious discrimination claims have been dismissed. (See, Order [Docket No. 46]). This Court repeats, improper motive is not an element of promissory estoppel, and the third “injustice” prong of Plaintiff's promissory estoppel claim does not hinge in any way on the motives behind adopting the Enacting Resolution or the Rescinding Resolution. See, supra.

More importantly, Plaintiff has not shown diligence in conducting discovery following the July 31, 2020, Order. For example, Plaintiff waited two-and-a-half months to serve its first set of discovery requests on October 15, 2020. (See, Ex. 15 [Docket No. 70-1], at 86–96). Plaintiff also waited over three months, until November 4, 2020, to notice its Rule 30(b)(6) deposition of the

City. (Ex. 1[Docket No. 53-1], at 8). Plaintiff has provided no explanation for this delay. Moreover, Plaintiff waited until November 4, 2020, to even suggest amending the Pretrial Scheduling Order to Defendant. (Ex. 5 [Docket No. 70-1], at 38). Given this lack of diligence, the Court finds that Plaintiff has not shown good cause due to the timing of July 31, 2020, Order. See, Burris, 2009 WL 3164783, at *4; Sherman, 532 F.3d at 716–17; see also, Franklin for Estate of Franklin v. Peterson, No. 14-1467 (DWF/JSM), 2015 WL 13484483, at *3 (D. Minn. Aug. 21, 2015) (finding no good cause where "[n]ot only ha[d] the plaintiff not been diligent in pursuing discovery, he ha[d] not been diligent in bringing his request for an extension").

Plaintiff next contends that the Pretrial Scheduling Order should be amended to accommodate "the replacement of [Plaintiff's] counsel on record." (Mem. in Supp. [Docket No. 65], at 2). However, Plaintiff's current counsel appeared in this case in February 2020. [Docket Nos. 38, 41]. Plaintiff does not provide any explanation as to why accommodation for the replacement of counsel is now required. Further, even if accommodation were required, Plaintiff did not act diligently in waiting over eight months after its counsel was replaced to seek to amend to Pretrial Scheduling Order. Hence, Plaintiff has not shown good cause due to its replacement of counsel.

Lastly, Plaintiff contends that the Pretrial Scheduling Order should be amended due to the City's purported refusal to permit adequate discovery. (Mem. in Supp. [Docket No. 65], at 2, 4–5). Specifically, Plaintiff contends that "[t]he City blocked discovery into some core topics about this litigation," and Plaintiff lists seven topics on which it contends Defendant has improperly denied discovery. (Id. at 4–5). Each of the topics specified by Plaintiff seeks information regarding the motives behind adopting the Enacting Resolution and the Rescinding Resolution. (See, Id.). Those topics are not relevant to Plaintiff's promissory estoppel claim; hence, those topics are not

discoverable. See, Hofer, 981 F.2d at 380. As such, Defendant's purported refusal to permit adequate discovery does not establish good cause to amend the Pretrial Scheduling Order.

In sum, Plaintiff has not shown diligence in attempting to meet the deadlines in the Pretrial Scheduling Order. Moreover, Plaintiff has not shown diligence in seeking to amend the Pretrial Scheduling Order by bringing this motion. Therefore, the Court finds that Plaintiff has not now shown good cause to Amend the Pretrial Scheduling Order. See, e.g., Sherman, 532 F.3d at 716–17.; Burris, 2009 WL 3164783, at *4; Franklin for Estate of Franklin, 2015 WL 13484483, at *3.

Therefore, Plaintiff's Motion to Amend the Scheduling Order and for Leave to Amend the Complaint; or, Alternatively, for a Contested Non-Suit, [Docket No. 64], is **DENIED** to the extent that it seeks an Order of this Court amending the Pretrial Scheduling Order.

ii. Complaint

Plaintiff next seeks an Order of this Court granting Plaintiff leave to amend its Complaint to reassert its dismissed free exercise, free speech, and equal protection claims, and to add newly asserted Establishment Clause and Due Process Clause claims. (Plf.'s Corrected Mot. to Am. the Scheduling Order and for Leave to Am. the Compl.; or, Alternatively, for a Contested Non-Suit [Docket No. 64]).

Pursuant to the Pretrial Scheduling Order, the deadline for motions to amend the pleadings was October 15, 2019. [Docket No. 18]. Because Plaintiff is seeking to amend its Complaint outside of that deadline, Plaintiff is required to show good cause. See, Harris, 760 F.3d at 786; Popoalii, 512 F.3d at 497; Sherman, 532 F.3d at 716. For the reasons explained below, this Court finds that Plaintiff has not shown good cause.

Plaintiff prefaces its proposed Amended Complaint with an "explanatory note" which states Plaintiff's Proposed Amended Complaint "is intended to correct the pleading deficiencies

identified in the Court's order of dismissal (without prejudice) of the constitutional issues." (Proposed Am. Compl. [Docket No. 64-1] ¶ 1). Likewise, Plaintiff asserts in the present motion that it seeks leave to amend the Complaint to "correct the pleading deficiencies identified in the order of dismissal." (Plf.'s Corrected Mot. to Am. the Scheduling Order and for Leave to Am. the Compl.; or, Alternatively, for a Contested Non-Suit [Docket No. 64]; accord, Mem. in Supp. [Docket No. 65], at 1).

However, Plaintiff's mere professed intention of clarifying its original Complaint is insufficient to establish good cause. See, Unity Healthcare, Inc. v. Cnty of Hennepin, 2015 WL 12977020, at *3 (D. Minn. Mar. 10, 2015) (finding that "the plaintiffs' desire to clarify their allegations [related to recently dismissed claims] is an insufficient basis for this Court to find that there is good cause to allow an untimely amendment" and "the plaintiffs' mere desire to revive those claims to address the problems identified in the District Court's dismissal does not establish good cause"); Target Corp. v. LCH Pavement Consultants, LLC, 960 F. Supp. 2d 999, 1009 (D. Minn. 2013) (finding that the dismissal of an insufficiently pled claim after the deadline to amend pleadings had passed did not establish good cause to amend a complaint.).

Pursuant to Local Rule 16.3, a party seeking to extend a deadline after that deadline has already passed must demonstrate "extraordinary circumstances" for such an extension. Local Rule 16.3(d); see also, Coleman v. Minneapolis Pub. Sch., No. 18-cv-2283 (DSD/ECW), 2020 WL 6042394, at *3, 5 (D. Minn. Oct. 13, 2020). A court may find such extraordinary circumstances based on "the emergence of new facts." Hollander, 705 F.3d at 358. Similarly, pursuant to Rule 16(b), a party must show "good cause" to amend its Complaint after the deadline established in the Pretrial Scheduling Order. See, Harris, 760 F.3d at 786; Popoalii, 512 F.3d at 497. "Where a party files a motion after the deadline for amending the pleadings has expired, the Court asks

whether the moving party has demonstrated 'that the existing schedule [could not] reasonably be met despite the diligence of the party seeking the extension.'" Unity Healthcare, Inc., 2015WL 12977020, at *2 (alteration in original) (quoting Archer Daniels Midland v. Aon Risk Servs., Inc., 187 F.R.D. 578, 581–82 (D. Minn. 1999)). "[A] party does not meet the good cause standard under Rule 16(b) if the relevant information on which it based the amended claim was available to it earlier in the litigation." Target Corp., 960 F. Supp. 2d at 1008; see also, Archer Daniels Midland, 187 F.R.D. at 582 (quotation omitted) ("It hardly bears mention, therefore, that carelessness is not compatible with a finding of diligence and offers no reason for a grant of relief.").

Here, Plaintiff does not argue that new facts have emerged in this case. Rather, in the "explanatory note" prefacing Plaintiff's Proposed Amended Complaint, Plaintiff states that "[t]he core factual allegations are still the same." (Proposed Am. Compl. [Docket No. 64-1] ¶ 1). Upon review of Plaintiff's Proposed Amended Complaint, this Court finds that although Plaintiff seeks to add more detail to its original allegations, Plaintiff does not allege any "new" facts which could not have with due diligence been asserted in its original Complaint. Most, if not all, of the additional factual allegations that Plaintiff now seeks to allege in its Proposed Amended Complaint are matters of public record. (See, Proposed Am. Compl. [Docket No. 64-1]). Plaintiff is merely reasserting three of the same, but already dismissed, claims on the same, albeit more detailed, factual allegations. Although Plaintiff now further seeks to add two new theories of liability, they too are based on the same basic set of facts. (See, Id.).

Nothing in record presently before the Court indicates that these additional details and theories of liability could not have with due diligence been alleged in Plaintiff's original Complaint. Therefore, this Court finds that Plaintiff has not shown good cause to amend its

Complaint.[9] See, e.g., Unity Healthcare, Inc., 2015WL 12977020, at *2–4 (finding no good cause where additional factual allegations meant to "clarify" dismissed claims could have with due diligence been alleged previously); Target Corp., 960 F. Supp. 2d at 1007–09 (finding no good cause where new theories of liability could have with due diligence been asserted earlier).

Accordingly, Plaintiff's Motion to Amend the Scheduling Order and for Leave to Amend the Complaint; or, Alternatively, for a Contested Non-Suit, [Docket No. 64], is **DENIED** to the extent that it seeks an Order of this Court granting leave for Plaintiff to amend its Complaint.

iii. Non-Suit

Lastly, Plaintiff seeks, in the alternative, an Order of this Court granting it a contested non-suit. (Plf.'s Corrected Mot. to Am. the Scheduling Order and for Leave to Am. the Compl.; or, Alternatively, for a Contested Non-Suit [Docket No. 64]). Specifically, Plaintiff seeks leave of this Court to voluntarily dismiss its promissory estoppel claim without prejudice so that Plaintiff can reassert its constitutional claims in "a second round of litigation." (See, Mem. in Supp. [Docket No. 65], at 12–14).

[9] Furthermore, the Court has extensively reviewed Plaintiff's Proposed Amended Complaint, [Docket No. 64-1], and compared its proposed amended allegations with those in Plaintiff's original Complaint, [Docket No. 1], in relation to the free exercise, free speech, and equal protection claims, which Judge Wright has already found lacking but Plaintiff now seeks to reassert. This Court concludes that Plaintiff's proposed amended claims fail to correct the deficiencies observed in Judge Wright's July 31, 2020, Order. [Docket No. 46]. Thus, Plaintiff's proposed reasserted claims are futile. See, e.g., Hillesheim v. Myron's Cards & Gifts, Inc., 897 F.3d 953, 955 (8th Cir. 2018) (quotations omitted) ("An amendment is futile if the amended claim could not withstand a motion to dismiss under Rule 12(b)(6)."). Moreover, in reference to the new theories of liability that Plaintiff now seeks to assert for the first time, this Court finds that allowing Plaintiff to assert new claims at this late stage of the litigation process, after discovery has closed, and on the eve of trial would be inappropriate. See, Kozlov v. Associated Wholesale Grocers, Inc., 818 F.3d 380 (8th Cir. 2016) (alteration in original) (quoting Thompson-El v. Jones, 876 F.2d 66, 67 (8th Cir. 1989)) ("Moreover, '[w]hen a considerable amount of time has passed since the filing of a complaint and the motion to amend is made on the eve of trial and will cause prejudice and further delay, courts require the movant to provide some valid reason for the belatedness of the motion.'"); ARE Sikeston Ltd. P'ship v. Weslock Nat., Inc., 120 F.3d 820 (8th Cir. 1997) (internal quotation marks omitted) (affirming denial of leave to amend complaint where the district court "concluded that at this late stage in the proceedings it is inappropriate for the Court to allow the plaintiff to amend"); Vistaprint Tech. Ltd. v. 123Print, Inc., No. 07-2298 (JNE/AJB), 2008 WL 11464757, at *4 n.4 (collecting cases and noting that "[t]he Eighth Circuit routinely affirms denials of a motion to amend where discovery has closed," and "[t]hey also routinely uphold the denial of a motion to amend filed on the eve of trial").

Pursuant to Federal Rule of Civil Procedure 41(a)(2), after a defendant has served its answer, "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." "The purpose of Rule 41(a)(2) is primarily to prevent voluntary dismissals which unfairly affect the other side." Paulucci v. City of Duluth, 826 F.2d 780, 782 (8th Cir. 1987). In deciding whether to allow a voluntary dismissal, a court should consider "whether the party has presented a proper explanation for its desire to dismiss; whether a dismissal would result in a waste of judicial time and effort; and whether a dismissal will prejudice the defendants." Donner v. Alcoa, Inc., 709 F.3d 694, 697 (8th Cir. 2013) (quoting Thatcher v. Hanover, 659 F.3d 1212, at 1213–14 (8th Cir. 2011)). "[A] party is not permitted to dismiss merely to escape an adverse decision nor to seek a more favorable forum." Id. "A decision whether to allow a party to voluntarily dismiss a case rests upon the sound discretion of the court." Thatcher, 659 F.3d at 1214 (quoting Hamm v. Rhone-Poulenc Rorer Pharm., Inc., 187 F.3d 941, 950 (8th Cir. 1999)).

In reference to the first factor, Plaintiff asserts that it seeks a non-suit because it "needs more time to gather admissible evidence about the City's motivations." (Mem. in Supp. [Docket No. 65], at 13). However, once again, the Court notes that the City's motivations are in no way relevant to Plaintiff's sole remaining promissory estoppel claim. See, supra. What Plaintiff is seeking is analogous to escaping an adverse judgement because Plaintiff is plainly seeking dismissal to avoid the consequences of its own lack of diligence as outlined above. Seeking to escape an adverse judgment is not a proper purpose for the desire to dismiss. See, Thatcher, 659 F.3d at 1214. The first factor weighs against granting leave for Plaintiff to dismiss its promissory estoppel claim without prejudice.

In reference to the second factor, Plaintiff concedes that dismissal would be a waste of judicial resources. This Court agrees. Thus, the second factor too weighs against granting leave for Plaintiff to dismiss its promissory estoppel claim without prejudice.

In reference to the third factor, the Defendant argues that it will be prejudiced if Plaintiff is permitted to start this case over. (Mem. in Opp'n [Docket No. 68], at 47). Specifically, Defendant asserts that this case has been pending for more than nineteen months, Defendant has already successfully moved for judgment on the pleadings regarding Plaintiff's constitutional claims, Defendant has already successfully defended against Plaintiff's motion for judgement on the pleadings, and discovery is over regarding sole remaining promissory estoppel claim. (Id.). Defendant further asserts that it "would face significant costs if forced to start all over." (Id.).

"The time and effort invested by the parties, and the stage to which the case had progressed, are among the most important factors to be considered in deciding whether to allow a dismissal without prejudice, and, if so, on what conditions." Mullen v. Heinkel Filtering Sys., Inc., 770 F.3d 724, 729 (8th Cir. 2014) (quoting Kern v. TXO Prod. Corp., 738 F.2d 968, 970 (8th Cir. 1984)). Here, the Parties have already expended considerable effort in litigating the present case, and it is in its late stages. Considering the stage of the present litigation and its procedural history, the Court concludes that Defendant would in fact be severely prejudiced if Plaintiff were permitted to reassert its claims anew in a second round of litigation. See, Millsap by Millsap v. Jane Lamb Mem. Hosp., 111 F.R.D. 481, 484 (S.D. Iowa 1986) (finding the defendant would be prejudiced by dismissal after discovery was over and the defendant had already filed for summary judgment). The third factor therefore also weighs against granting leave for Plaintiff to dismiss its promissory estoppel claim without prejudice.

Accordingly, Plaintiff's Motion to Amend the Scheduling Order and for Leave to Amend the Complaint; or, Alternatively, for a Contested Non-Suit, [Docket No. 64], is **DENIED** to the extent that it seeks an Order of this Court granting leave for Plaintiff to dismiss its promissory estoppel claim without prejudice.

IV. CONCLUSION

For the foregoing reasons, and based on all of the files, records, and proceedings herein, **IT IS HEREBY ORDERED THAT**:

1. Defendant's Motion for Protective Order, [Docket No. 50], is **GRANTED in part** and **DENIED in part** as set forth above;
2. Plaintiff's Motion to Compel, [Docket No. 57], is **GRANTED in part** and **DENIED in part** as set forth above;
3. Plaintiff's Corrected Motion to Amend Scheduling Order and for Leave to Amend the Complaint; or, Alternatively, for a Contested Non-Suit, [Docket No. 64], is **DENIED**; and
4. Defendant Belle Plaine shall designate and produce a Rule 30(b)(6) deponent, as set forth more fully above, within fourteen (14) days of the date of this Order.

Dated: January 26, 2021

s/Leo I. Brisbois
Leo I. Brisbois
U.S. MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

The Satanic Temple,

Plaintiff,

v.

City of Belle Plaine, Minnesota, et al.,

Defendants.

Case No. 19-cv-1122 (WMW/JFD)

ORDER

The Satanic Temple, Inc.,

Plaintiff,

v.

City of Belle Plaine, MN,

Defendant.

Case No. 21-cv-0336 (WMW/JFD)

ORDER

In these two related matters, Plaintiff The Satanic Temple (TST) alleges that Defendant City of Belle Plaine, Minnesota (Belle Plaine), violated its rights under federal law, the United States Constitution, and the Minnesota Constitution and should be held liable under the doctrine of promissory estoppel. In TST's first-filed case, this Court dismissed TST's constitutional and statutory claims for failure to state a claim on which relief can be granted. *See Satanic Temple v. City of Belle Plaine* (*Satanic Temple I)*, 475 F. Supp. 3d 950 (D. Minn. 2020). In *Satanic Temple I*, Belle Plaine now moves for summary judgment as to TST's remaining promissory-estoppel claim. TST opposes Belle Plaine's motion and appeals the magistrate judge's January 26, 2021 Order, which

denied in part TST's motion to compel discovery, denied TST's motion to amend the pretrial scheduling order, and denied TST's motion for leave to amend its complaint to re-assert its dismissed constitutional claims and add new constitutional claims.

After the magistrate judge denied TST's motion to amend its complaint in *Satanic Temple I*, TST commenced a second lawsuit on February 4, 2021. *See Satanic Temple, Inc. v. City of Belle Plaine* (*Satanic Temple II*), No. 21-cv-0336, Dkt. 1 (D. Minn. Feb. 4, 2021). In *Satanic Temple II*, TST asserts the same constitutional claims that TST unsuccessfully attempted to assert in its proposed amended complaint in *Satanic Temple I*. Belle Plaine moves to dismiss TST's complaint in *Satanic Temple II*, arguing that the claims are barred by res judicata based on *Satanic Temple I* and, in the alternative, the complaint fails to state a claim on which relief can be granted. Belle Plaine also moves for sanctions against TST's counsel, arguing that the filing of *Satanic Temple II* is a frivolous attempt to circumvent the rulings in *Satanic Temple I* and waste judicial resources.

For the reasons addressed below, Belle Plaine's motions for summary judgment, dismissal, and sanctions are granted and the January 26, 2021 Order is affirmed.

BACKGROUND

On February 21, 2017, the Belle Plaine City Council enacted Resolution 17-020, titled "ESTABLISHING A POLICY REGARDING A LIMITED PUBLIC FORUM IN VETERANS MEMORIAL PARK" (the Enacting Resolution). In relevant part, the Enacting Resolution provides:

> [T]he Council wishes to allow private parties access to Veterans Memorial Park for the purpose of erecting displays in keeping with the purpose of honoring and memorializing veterans . . . .
>
> . . .
>
> 1. The City designates a limited public forum in Veterans Memorial Park for the express purpose of allowing individuals or organizations to erect and maintain privately owned displays that honor and memorialize living or deceased veterans, branch of military and Veterans organizations affiliated with Belle Plaine. . . .
>
> . . .
>
> 9. The requesting party and not the City shall own any display erected in the limited public forum. The display must have liability coverage of $1,000,000 . . . .
>
> . . .
>
> 13. In the event the City desires to close the limited public forum or rescind this policy, the City, through its City Administrator, may terminate all permits by giving ten (10) days' written notice of termination to [the] Owner, within which period the owner must remove their display from city property.

On February 23, 2017, TST submitted an application to erect a display in Belle Plaine's Veterans Memorial Park pursuant to the Enacting Resolution. TST received a permit on March 29, 2017. The Belle Plaine Veterans Club also obtained a permit under the Enacting Resolution to erect a display. On June 29, 2017, TST notified the City Administrator that its memorial monument was complete. TST spent "substantial sums

in the design and construction of its display" and acquired liability insurance as required by the Enacting Resolution.

On July 17, 2017, Belle Plaine rescinded the Enacting Resolution by enacting Resolution 17-090, titled "RESCINDING THE POLICY AND ELIMINATING THE LIMITED PUBLIC FORUM IN VETERANS MEMORIAL PARK" (the Rescission Resolution). In relevant part, the Rescission Resolution provides:

> The policy established in Resolution 17-020 is rescinded and the limited public forum established in the Park is hereby eliminated. Private displays or memorials placed in the Park shall be removed within a reasonable period by the owner thereof or, upon notice to such owner, or they will be deemed abandoned and removed by the City.

The next day, Belle Plaine notified TST by letter that the Belle Plaine City Council adopted the Rescission Resolution and enclosed a check reimbursing TST for its permit-application fee. As a result of the Rescission Resolution, TST never erected its display. Belle Plain Veteran's Club voluntarily removed its display from Veterans Memorial Park before Belle Plaine enacted the Rescission Resolution.

I. TST's First Lawsuit: *Satanic Temple I*

On April 25, 2019, TST commenced its first lawsuit against Belle Plaine, *Satanic Temple I*.[1] The complaint in *Satanic Temple I* alleges that Belle Plaine violated TST's rights under federal law, the United States Constitution, and the Minnesota Constitution

[1] TST also sued Belle Plaine Mayor Christopher Meyer and four members of the Belle Plaine City Council.

and should be held liable under the doctrine of promissory estoppel.[2] In a July 31, 2020 Order, this Court dismissed TST's constitutional and statutory claims without prejudice for failure to state a claim on which relief can be granted. *Satanic Temple I*, 475 F. Supp. 3d at 966. As a result, only TST's promissory-estoppel claim remains.

In December 2020, TST moved to compel discovery and amend the pretrial scheduling order. TST also sought leave to amend its complaint to re-assert the constitutional claims that the Court had dismissed and to assert new constitutional claims. In a January 26, 2021 Order, the magistrate judge denied in part TST's motion to compel discovery and denied TST's motion to amend. The magistrate judge concluded that TST had not demonstrated good cause to amend the pretrial scheduling order, which required any motion to amend the pleadings to be filed no later than October 15, 2019. The magistrate judge also concluded that TST had not demonstrated good cause to amend the complaint, observing that TST "does not allege any 'new' facts [that] could not have with due diligence been asserted in its original Complaint." In addition, the magistrate judge concluded that TST's proposed amended claims are futile because they fail to correct the deficiencies previously identified by the Court when dismissing TST's constitutional claims.

Belle Plaine moves for summary judgment in *Satanic Temple I* as to TST's promissory-estoppel claim. TST opposes summary judgment and also appeals the magistrate judge's January 26, 2021 Order denying TST's motion to amend.

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[2] TST also alleged, but voluntarily dismissed, three contract-related claims in *Satanic Temple I*.

II. TST's Second Lawsuit: *Satanic Temple II*

On February 4, 2021, after the magistrate judge denied TST's motion to amend in *Satanic Temple I*, TST filed a second lawsuit against Belle Plaine, *Satanic Temple II*. The eight-count complaint in *Satanic Temple II* alleges that Belle Plaine violated TST's rights to free speech, free exercise of religion, equal protection, and due process under the United States Constitution and the Minnesota Constitution. Belle Plaine moves to dismiss TST's complaint in *Satanic Temple II*. Belle Plaine argues that TST's claims in *Satanic Temple II* are barred by res judicata and, in the alternative, fail to state a claim on which relief can be granted. Belle Plaine also moves for sanctions against TST's counsel, arguing that the filing of *Satanic Temple II* is a frivolous attempt to circumvent the rulings in *Satanic Temple I* and waste judicial resources.

ANALYSIS

I. Belle Plaine's Motion for Summary Judgment (*Satanic Temple I*)

Summary judgment is proper when the record before the district court establishes that there is "no genuine dispute as to any material fact" and the moving party is "entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A genuine dispute as to a material fact exists when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). When deciding a motion for summary judgment, a district court construes the evidence in the light most favorable to the nonmoving party and draws all reasonable inferences in the nonmoving party's favor. *See Windstream Corp. v. Da Gragnano*, 757 F.3d 798, 802–03

(8th Cir. 2014). When asserting that a fact is genuinely disputed, the nonmoving party must "submit affidavits, depositions, answers to interrogatories, or admissions on file and designate specific facts" in support of that assertion. *Gander Mountain Co. v. Cabela's, Inc.*, 540 F.3d 827, 831–32 (8th Cir. 2008); *see also* Fed. R. Civ. P. 56(c)(1)(A). A nonmoving party may not "rest on mere allegations or denials but must demonstrate on the record the existence of specific facts which create a genuine issue for trial." *Krenik v. County of Le Sueur*, 47 F.3d 953, 957 (8th Cir. 1995) (internal quotation marks omitted).

Belle Plaine moves for summary judgment as to TST's remaining promissory-estoppel claim in *Satanic Temple I*. Promissory estoppel permits courts to enforce a promise on equitable grounds even if the parties did not enter into a contract. *City of St. Joseph v. Sw. Bell Tel.*, 439 F.3d 468, 477 (8th Cir. 2006). To prevail on its promissory-estoppel claim under Minnesota law, TST must prove three elements: (1) the promisor made a clear and definite promise, (2) the promisor intended to induce reliance and such reliance occurred, and (3) the promise must be enforced to prevent an injustice. *Hous. & Redevelopment Auth. of Chisholm v. Norman*, 696 N.W.2d 329, 336 (Minn. 2005). The Court addresses each element in turn.[3]

[3] As an initial matter, TST argues that Belle Plaine has not laid foundation for Exhibits 4, 5, 8, and 33–45 that Belle Plaine filed in support of its motion for summary judgment and moves to strike these exhibits. TST also moves to strike a declaration Belle Plaine filed with its reply brief. TST is correct that, "[t]o be considered on summary judgment, documents must be authenticated by and attached to an affidavit made on personal knowledge setting forth such facts as would be admissible in evidence." *DG & G, Inc. v. Flexsol Packaging Corp. of Pompano Beach*, 576 F.3d 820, 825–26 (8th Cir. 2009) (internal quotation marks omitted). But here, TST's argument lacks merit. Exhibits 4, 5, and 8 are copies of the city resolutions and the permit that are

A. Promise

The first element that TST must prove to prevail on its promissory-estoppel claim is that Belle Plain made a clear and definite promise to TST. *Id.* It is undisputed that the alleged promise in this case arises from the permit that Belle Plaine issued to TST on March 29, 2017, and *not* Belle Plaine's passage of the Enacting Resolution on February 21, 2017.

A clear and definite promise "require[s] that the promisor should reasonably expect to induce action or forbearance on the part of the promisee." *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 746 (Minn. 2000). Minnesota has adopted the Restatement (Second) of Contracts with respect to promissory estoppel. *See Walser v. Toyota Motor Sales, U.S.A., Inc.*, 43 F.3d 396, 400–01 (8th Cir. 1994) (citing *Christensen v. Minneapolis Mun. Emps. Ret. Bd.*, 331 N.W.2d 740, 749 (Minn. 1983)). Under the

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the basis for TST's claims, exhibits to TST's complaint, and relied on by TST as well. Exhibits 33 and 34 are TST's discovery responses. As to the other eleven challenged exhibits, Belle Plaine filed with its reply brief the declaration of Belle Plaine's City Administrator, authenticating these exhibits. A district court "has broad discretion in permitting supplementation of the summary judgment record" and "has discretion whether to accept or reject untimely filed materials." *See id.* at 826 (internal quotation marks omitted). Many courts have permitted subsequently filed affidavits to remedy previously filed unsworn materials. *See, e.g.*, *id.* (finding that the district court did not abuse its discretion by permitting a party to supplement the summary judgment record with an affidavit that cured a previously unsworn expert report); *Skrovig v. BNSF Ry. Co.*, 855 F. Supp. 2d 933, 936 (D.S.D. 2012) (considering expert witness reports initially filed without affidavits when plaintiffs later submitted sworn affidavits from the two expert witnesses with the original reports attached); *Maytag Corp. v. Electrolux Home Prods., Inc.*, 448 F. Supp. 2d 1034, 1064 (N.D. Iowa 2006) ("[S]ubsequent verification or reaffirmation of an unsworn expert's report, either by affidavit or deposition, allows the court to consider the unsworn expert's report on a motion for summary judgment."). Moreover, the analysis that follows does not rely on most of the exhibits that TST challenges. For these reasons, TST's motion to strike is denied.

Restatement, a "promise" is defined as "a manifestation of intention to act or refrain from acting in a specified way, so made as to justify a promisee in understanding that a commitment has been made." Restatement (Second) of Contracts § 2(1) (Am. L. Inst. 1981). When a promise is accompanied by a legal duty to perform, the promise creates a contract. *Id.* cmt. a. But when a contract having legal effect does not exist, as is the case with respect to promissory estoppel, a "promise" refers to a "promisor's words or acts of assurance, including the justified expectations of the promisee." *Id.*

Belle Plaine argues that the March 29, 2017 permit it issued to TST is not a clear and definite promise because Belle Plaine reserved the right to terminate the limited public forum in Veterans Memorial Park at any time. Under the Restatement, when an alleged promisor's performance is "entirely optional," such an "illusory promise" falls outside the Restatement's definition of a promise. *Id.* cmt. e. Thus, "[e]ven if a present intention is manifested, the reservation of an option to change [the promisor's] intention means that there can be no promisee who is justified in an expectation of performance." *Id.*

Here, the permit that Belle Plaine issued to TST includes both a cover letter and a copy of the permit application reflecting its approval as of March 29, 2017. The cover letter does not reference the Enacting Resolution or Belle Plaine's right to terminate the limited public forum, but provides as follows:

> The City of Belle Plaine has approved your request for a permit to emplace a display within the Limited Public Forum at Veterans Memorial Park. As a reminder, the display must be placed by the owner of the display under the supervision of

> the public works department. The limited public forum area will be fully marked by April 3, 2017. Once the area is marked, we will be ready to supervise placement. Please make contact with me via e-mail . . . or by phone . . . to arrange a time for placement. All displays must be marked with a visible name of the owner and the permit number. Your permit number Is LPF 17-02. This permit is good for one year from the date of this letter. You may reapply to place another display once the display under this permit is removed. Please contact me if you have any questions.

In the approved permit application, however, TST acknowledged that it would "comply with the Limited Public Forum Policy of the City of Belle Plaine," which undisputedly is a reference to the Enacting Resolution.[4] It also is undisputed that, under Resolution 17-020, Belle Plaine reserved the option to terminate all permits pertaining to the limited public forum:

> In the event the City desires to close the limited public forum or rescind this policy, the City, through its City Administrator, may terminate all permits by giving ten (10) days' written notice of termination to [the] Owner, within which period the owner must remove their display from city property.

Notably, however, although Belle Plaine reserved the right to close the limited public forum and terminate all permits, Belle Plaine manifested its intent to do so only "by

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[4] TST argues that the permit application and its reference to the Enacting Resolution are not a part of the permit. TST appears to contend that the terms of Belle Plaine's alleged promise are limited to the four corners of the one-page cover letter approving TST's permit request. But the evidence reflects otherwise. The cover letter includes "reminder[s]" about the permit requirements without detailing every requirement, and the cover letter encloses the permit application with notations reflecting its approval on March 29, 2017, including the city administrator's signature. To the extent that the permit represents a clear and definite promise, the permit application is a part of the permit.

giving ten (10) days' written notice of termination." Thus, the permit does *not* make Belle Plaine's performance an "entirely optional . . . illusory promise." *See* Restatement (Second) of Contracts § 2 cmt. e. Rather, by issuing TST a permit, Belle Plaine manifested its intent to allow TST to place a display in Veterans Memorial Park for up to a year *and* to provide TST ten days' notice if Belle Plaine decided to terminate the permit early, thereby implicitly guaranteeing TST a period of *at least* ten days to place its display in Veterans Memorial Park.

According to Belle Plaine, TST's witnesses testified at their depositions that they understood that Belle Plaine could close the limited public forum or rescind the policy at any time with ten days' written notice and that there were no limits on Belle Plaine's right to do so. These facts may be undisputed, but they are immaterial to whether Belle Plaine's performance was optional or illusory. Although Belle Plaine had a right to rescind the policy, it nonetheless manifested an intent to do so *only* after providing ten days' written notice. Thus, Belle Plaine's performance was not entirely optional.

A promise is clear and definite if "the promisor should reasonably expect to induce action or forbearance on the part of the promisee." *Martens*, 616 N.W.2d at 746. On this record, a jury reasonably could find that Belle Plaine's permit to TST conveyed a promise—namely, to allow TST an opportunity to place a display in Veterans Memorial Park for at least ten days and up to a year, and to provide TST ten days' notice if the permit would be terminated before March 29, 2018. And a jury could find that Belle Plaine should reasonably have expected such a promise to induce action on the part of

TST—namely, expending time, money, and effort constructing a display and transporting it to Veterans Memorial Park.

For these reasons, genuine disputes of material fact exist as the first element of TST's promissory-estoppel claim.

B. Reliance

The second element that TST must prove to prevail on its promissory-estoppel claim is that Belle Plaine intended to induce TST to rely on Belle Plaine's promise and that such reliance in fact occurred. *Hous. & Redevelopment Auth.*, 696 N.W.2d at 336. In addition, "such reliance must have occurred to [TST's] detriment." *Cohen v. Cowles Media Co.*, 479 N.W.2d 387, 391 (Minn. 1992).

It is undisputed that Belle Plaine granted TST a permit "to emplace a display within the Limited Public Forum at Veterans Memorial Park." The permit also expressly invited TST to contact the city administrator "to arrange a time for placement" of TST's display. A jury reasonably could infer from these facts that Belle Plaine intended for TST to rely on Belle Plaine's promise by undertaking efforts to place a display in Veterans Memorial Park.

To prove the reliance element of its promissory-estoppel claim, however, TST also must prove that it detrimentally relied on Belle Plaine's promise. *Cohen*, 479 N.W.2d at 391. TST contends that it detrimentally relied on Belle Plaine's promise by "expending time, effort, and expense to create a monument [that] is not fulfilling its purpose." Both of TSTs directors testified, however, that TST contacted an artist in February 2017 and

expressed interest in commissioning the construction of a monument *before* TST obtained a permit to display it in Veterans Memorial Park and *regardless* of whether Belle Plaine voted to establish a limited public forum in Veterans Memorial Park. Although TST disputes whether it knew, at that time, that Belle Plaine would be establishing a limited public forum, this dispute is immaterial. The relevant "promise" on which TST allegedly relied is the March 29, 2017 permit. The undisputed evidence establishes that TST expressed interest in commissioning the construction of a monument, and began expending efforts toward that goal, more than a month before TST obtained the permit. TST could not have relied on a promise that had not yet been made.

TST contends that it only began the process of creating a *design* for its monument in February 2017—a necessary predicate for its permit application—and that TST did not begin the process of *constructing* the monument until April 13, 2017, which was two weeks after TST received the permit. Belle Plaine counters that TST had other motives for proceeding with the construction of its monument and, therefore, the monument would have been constructed regardless of whether a permit had been granted. These contentions present a genuine dispute of material fact as to whether Belle Plaine's permit—as opposed to other motivating factors—induced TST to proceed with the construction of its monument.

These contentions do not, however, present a genuine dispute of material fact as to whether TST relied on the permit *to its detriment*. As addressed above, a jury reasonably could find that Belle Plaine's permit to TST conveyed a promise—namely, to give TST

an opportunity to place a display in Veterans Memorial Park for at least ten days, and to provide TST ten days' notice if the permit would be terminated before March 29, 2018. A jury also reasonably could find that TST relied on this promise when it continued the process of constructing its monument. But for several reasons, the undisputed facts demonstrate that Belle Plaine *fulfilled* its promise and that TST received the benefit of that promise.

First, TST contends that it expended time, effort, and expense creating a monument that it would not have created but for Belle Plaine's promise to allow the monument to be displayed in Veterans Memorial Park. But the permit did not promise to reimburse TST for the time, effort, and expense of creating a monument. It was understood that those expenses would be borne by TST.[5] Moreover, the undisputed evidence reflects that TST received monetary and in-kind contributions that exceeded the expenses associated with creating TST's monument.[6]

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[5] Although TST paid a fee to obtain the permit, it is undisputed that Belle Plaine reimbursed that fee when it terminated the permit early.

[6] TST asserts that it suffered reputational harm by soliciting contributions for a monument that was never displayed as intended. But TST's complaint does not allege reputational harm and TST provides no evidence to support this assertion. Indeed, TST relies solely on the testimony of one of its directors, who expressed his admittedly "speculative" opinion that TST's reputation had been harmed. TST argues that donors entrusted TST with their donations based on an expectation that TST's monument would be displayed in Veterans Memorial Park, and TST's "status in its community has been lowered" because Belle Plaine broke its promise. But Belle Plaine provided TST a limited-time opportunity to display its monument, and TST failed to do so during that time. To the extent that TST represented to donors that it would have a guaranteed, unfettered opportunity to display its monument for an entire year, TST misrepresented the scope of its permit.

TST also contends that its monument "is not fulfilling its purpose" because the monument is not being displayed in Veterans Memorial Park. But there is no evidence that Belle Plaine promised an indefinite opportunity for TST to display its monument. Instead, the permit provided a limited-time opportunity—at least ten days, but no more than a year—for TST to display a monument. TST received that opportunity but failed to take advantage of it. Specifically, pursuant to the permit, TST had the opportunity to place its monument in Veterans Memorial Park beginning on April 3, 2017. The permit remained effective for nearly four months, during which time TST could have—but did not—place a monument in Veterans Memorial Park. TST understood that its permit would expire after one year and could be terminated at any earlier time with ten days' notice. As such, TST could not have reasonably relied on an expectation that Belle Plain would *guarantee* TST the opportunity to display its monument for a full year. Yet TST did not utilize the permit before Belle Plaine provided the requisite notice of the permit's termination on July 18, 2017.[7]

In summary, the undisputed evidence demonstrates that TST did not *detrimentally* rely on Belle Plaine's permit.

[7] Although Belle Plaine's July 18, 2017 letter to TST does not expressly reference the ten days' notice, the letter includes a copy of the Rescission Resolution, which provides that private displays "shall be removed within a reasonable period by the owner thereof." There is no allegation or evidence that Belle Plaine failed to give the requisite ten days' notice.

C. Injustice

Even if TST could establish detrimental reliance, to prevail on its promissory-estoppel claim TST also must prove that Belle Plaine's alleged promise must be enforced to prevent an injustice. *Hous. & Redevelopment Auth.*, 696 N.W.2d at 336. This element "is a legal question for the court." *Cohen*, 479 N.W.2d at 391. The issue "is not whether the promise should be enforced to do justice, but whether enforcement is required to prevent an injustice." *Id.* "Numerous considerations enter into a judicial determination of injustice, including the reasonableness of a promisee's reliance and a weighing of public policies in favor of both enforcing bargains and preventing unjust enrichment." *Faimon v. Winona State Univ.*, 540 N.W.2d 879, 883 (Minn. Ct. App. 1995).

Here, as addressed, TST received the benefit of Belle Plaine's alleged promise: TST had a limited-time opportunity, for nearly four months, to display its monument in Veterans Memorial Park. That Belle Plaine terminated TST's permit early was both authorized by the Enacting Resolution and understood by TST as a possibility when TST applied for a permit. Any contrary expectation held by TST when relying on Belle Plaine's alleged promise would have been unreasonable. There also is no allegation or evidence that Belle Plaine was unjustly enriched. The only money Belle Plaine received from TST was a $100 permit fee, which Belle Plaine reimbursed to TST. In addition, as addressed, the evidence reflects that TST was not financially harmed and there is no evidence of reputational harm.

In summary, because TST lacks evidence to support two essential elements of its promissory-estoppel claim, Belle Plaine's motion for summary judgment is granted.

II. TST's Appeal of the January 26, 2021 Order (*Satanic Temple I*)

TST appeals the magistrate judge's January 26, 2021 Order in *Satanic Temple I*, which denied in part TST's motion to compel discovery, denied TST's motion to amend the pretrial scheduling order, and denied TST's motion for leave to amend its complaint to re-assert its dismissed constitutional claims and add new constitutional claims.

When reviewing an appeal of a magistrate judge's ruling on a nondispositive issue, the standard of review is "extremely deferential." *Scott v. United States*, 552 F. Supp. 2d 917, 919 (D. Minn. 2008). A magistrate judge's nondispositive ruling will be modified or set aside only if it is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a); LR 72.2(a)(3); *Ferguson v. United States*, 484 F.3d 1068, 1076 (8th Cir. 2007). A ruling is clearly erroneous when the reviewing court "is left with the definite and firm conviction that a mistake has been committed." *Wells Fargo & Co. v. United States*, 750 F. Supp. 2d 1049, 1050 (D. Minn. 2010) (internal quotation marks omitted). When a court "fails to apply or misapplies relevant statutes, case law or rules of procedure," its decision is contrary to law. *Id.* (internal quotation marks omitted).

Here, the magistrate judge determined that the discovery TST sought in its motion to compel is irrelevant to TST's promissory-estoppel claim. In addition, the magistrate judge determined that TST had not demonstrated good cause either to amend the scheduling order or to file an amended complaint more than one year after the court-

ordered deadline to do so. The magistrate judge also concluded that, even if TST had demonstrated good cause to amend the complaint, its proposed amendments would be futile. The Court reviews each conclusion in turn.

A. TST's Motion to Compel

TST challenges the magistrate judge's partial denial of TST's motion to compel discovery. Among other things, TST sought to depose Belle Plaine's mayor, city council members, and city attorney. TST asserted that the purpose of this discovery was to determine Belle Plaine's motives for adopting the Enacting Resolution and the Rescission Resolution. The magistrate judge denied these aspects of TST's motion to compel, concluding that the discovery TST sought has no relevance to TST's promissory-estoppel claim.

"Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case . . . ." Fed. R. Civ. P. 26(b)(1). Such information need not be admissible. *Id.* Rule 26 "is to be construed broadly and thus encompasses 'any matter that bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case.' " *In re Milk Prods. Antitrust Litig.*, 84 F. Supp. 2d 1016, 1027 (D. Minn. 1997) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978)). Although "[b]road discovery is an important tool for the litigant," *Chavis Van & Storage of Myrtle Beach, Inc. v. United Van Lines, LLC*, 784 F.3d 1183, 1198 (8th Cir. 2015), a district court has the discretion to limit discovery if the court determines that the burden of the discovery

sought outweighs its benefit, *Roberts v. Shawnee Mission Ford, Inc.*, 352 F.3d 358, 361 (8th Cir. 2003). And courts have "considerable discretion in determining the need for, and form of, discovery." *In re Nat'l Hockey League Players' Concussion Injury Litig.*, 120 F. Supp. 3d 942, 949 (D. Minn. 2015).

Here, the magistrate judge correctly concluded that the discovery TST sought has no relevance to TST's promissory-estoppel claim. As addressed above, the elements of a promissory-estoppel claim are: (1) the promisor made a clear and definite promise, (2) the promisor intended to induce reliance and such reliance occurred, and (3) the promise must be enforced to prevent an injustice. *Hous. & Redevelopment Auth.*, 696 N.W.2d at 336. As the magistrate judge correctly reasoned, the motivations of the alleged promisor have no bearing as to any of these elements.

According to TST, Belle Plaine's allegedly discriminatory motivations are relevant to the third element—whether Belle Plaine's promise must be enforced to prevent an injustice. But TST misconstrues the scope of the "injustice" element. Minnesota law recognizes promissory estoppel as "an equitable form of action based on good-faith reliance." *Olson v. Synergistic Techs. Bus. Sys., Inc.*, 628 N.W.2d 142, 152 (Minn. 2001). When evaluating the "injustice" prong in the promissory-estoppel context, courts consider "the reasonableness of a promisee's reliance" and assess "public policies in favor of both enforcing bargains and preventing unjust enrichment." *Faimon*, 540 N.W.2d at 883. In the promissory-estoppel context, the "injustice" that courts aim to prevent pertains to enforcing promises and vindicating the promisee's reliance, not

preventing broader societal injustices that might exist beyond the promise and reliance factors at issue. *See id.* at 883 n.2. Here, as addressed above, TST has not established that it detrimentally relied on Belle Plaine's alleged promise. And Belle Plaine's motivations—discriminatory or not—are not germane to whether Belle Plaine conveyed a promise or whether TST reasonably or detrimentally relied on that promise. Belle Plaine's motivations are similarly irrelevant to whether enforcing the promise is necessary to prevent an injustice.

For these reasons, the magistrate judge's partial denial of TST's motion to compel discovery is neither clearly erroneous nor contrary to law.

B. TST's Motion to Amend the Pretrial Scheduling Order

TST also challenges the magistrate judge's denial of TST's motion to amend the pretrial scheduling order. The magistrate judge concluded that TST had not demonstrated good cause to amend the pretrial scheduling order.

In most cases, a district court is required to issue a scheduling order that "must limit the time to join other parties, amend the pleadings, complete discovery, and file motions." Fed. R. Civ. P. 16(b)(3)(A). A party that seeks to modify a scheduling order must demonstrate good cause to do so. Fed. R. Civ. P. 16(b)(4); LR 16.3(b)(1). "The primary measure of good cause is the movant's diligence in attempting to meet the [scheduling] order's requirements. *Sherman v. Winco Fireworks, Inc.*, 532 F.3d 709, 716 (8th Cir. 2008) (internal quotation marks omitted).

Here, the magistrate judge issued the pretrial scheduling order on August 15, 2019. Pursuant to the pretrial scheduling order, the deadline for motions to amend the pleadings was October 15, 2019; the deadlines for expert disclosures were June 30, 2020, and August 31, 2020; and the deadline for discovery was December 4, 2020. TST did not move to amend the scheduling order until the close of discovery on December 4, 2020.

The magistrate judge found that TST had not shown diligence in either attempting to comply with the existing deadlines or seeking an amendment of those deadlines. The record supports this finding. Indeed, TST waited until October 15, 2020, to serve its first set of discovery requests. TST did not seek to amend the expert disclosure deadline until several months *after* that deadline had passed. And TST did not seek to amend its complaint until nearly fourteen months after the deadline to amend pleadings had passed. The magistrate judge rejected TST's contention that extra time was necessary to accommodate TST's replacement of counsel, observing that TST's current counsel appeared in this case in February 2020. The magistrate judge also rejected TST's argument that the four months between this Court's July 31, 2020 Order and the December 4, 2020 discovery deadline was an insufficient amount of time to obtain evidence necessary to prove one promissory-estoppel claim.

TST contends that its delays "are justifiable in light of the fact that discovery requests take time to create, which competed with undersigned Counsel's other cases." This argument is unpersuasive. After the Court's July 31, 2020 Order, only one claim remained: TST's promissory-estoppel claim. At that time, TST already had access to

some of the evidence it relies on to support that claim, including its own records, publicly available records, and documents TST obtained through a government-data request before commencing this lawsuit. Moreover, TST's argument does not explain why TST waited until the close of discovery to seek extensions, including an extension of the expert disclosure deadline that had passed several months earlier.

TST also argues that its delays are justifiable because Belle Plaine "refused to provide discovery on a number of issues surrounding [Belle Plaine's] motivation behind breaking its promise." As addressed above, such discovery is irrelevant to TST's promissory-estoppel claim. And Belle Plaine's purported refusal to provide discovery does not explain why TST waited more than two months to serve discovery in the first place and waited four months to seek to amend the scheduling order and complaint.

Accordingly, the magistrate judge's conclusion that TST failed to show good cause to amend the pretrial scheduling order is neither clearly erroneous nor contrary to law.

C. TST's Motion to Amend the Complaint

The magistrate judge also concluded that TST failed to show good cause to amend the complaint more than a year after the deadline to do so had passed and that TST's proposed amended complaint is futile. The Court reviews each conclusion in turn.

1. Good Cause

Leave to amend a pleading should be freely given "when justice so requires." Fed. R. Civ. P. 15(a)(2). There is not an absolute right to amend a complaint, however, and a

motion to amend may be denied based on a finding of "undue delay, bad faith, or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the non-moving party, or futility of the amendment." *Doe v. Cassel*, 403 F.3d 986, 990–91 (8th Cir. 2005) (internal quotation marks omitted). Moreover, "when a Rule 15 motion is brought after the court-ordered deadline, the court must conduct a 'good cause' analysis under Rule 16 to determine if amendment of the scheduling order is appropriate." *Shank v. Carleton Coll.*, 329 F.R.D. 610, 613 (D. Minn. 2019). "The primary measure of good cause is the movant's diligence in attempting to meet the [scheduling] order's requirements." *Id.* at 613–14 (quoting *Sherman*, 532 F.3d at 716). If the district court determines that the movant was diligent, the court also considers any possible prejudice to the nonmoving party. *See id.* at 614.

Ordinarily, "[a] party does not meet the good cause standard under Rule 16(b) if the relevant information on which it based the amended claim was available to [the party] earlier in the litigation." *IBEW Loc. 98 Pension Fund v. Best Buy Co., Inc.*, 326 F.R.D. 513, 522 (D. Minn. 2018) (internal quotation marks omitted); *accord Target Corp. v. LCH Pavement Consultants, LLC*, 960 F. Supp. 2d 999, 1008 (D. Minn. 2013). Good cause may be established "[b]ased on a change in the law or the emergence of new facts." *See Am. Family Mut. Ins. Co. v. Hollander*, 705 F.3d 339, 346 (8th Cir. 2013); *accord id.* at 358 (Beam, J., concurring in part). But good cause is not necessarily established by the fact that an insufficiently pled claim was dismissed after the deadline to amend the complaint had passed. *See, e.g.*, *Target Corp.*, 960 F. Supp. 2d at 1009. If "a

considerable amount of time has passed since the filing of a complaint and the motion to amend is made on the eve of trial and will cause prejudice and further delay, courts require the movant to provide some valid reason for the belatedness of the motion." *Kozlov v. Associated Wholesale Grocers, Inc.*, 818 F.3d 380, 395 (8th Cir. 2016) (internal quotation marks omitted); *accord ARE Sikeston Ltd. P'ship v. Weslock Nat'l, Inc.*, 120 F.3d 820, 833 (8th Cir. 1997).

Here, as the magistrate judge correctly observed, TST prefaced its proposed amended complaint with an "explanatory note" asserting that the "core factual allegations are still the same" as the original complaint. The magistrate judge, after reviewing the proposed amended complaint, found that TST was "merely reasserting three of the same, but already dismissed, claims on the same, albeit more detailed, factual allegations," and that TST sought "to add two new theories of liability . . . based on the same basic set of facts." In its appeal of the magistrate judge's order, TST does not specifically challenge these findings and conclusions. Therefore, TST has forfeited any such objections.

Even if TST had challenged this aspect of the magistrate judge's order, the record supports the magistrate judge's findings and conclusions as to this issue. TST's proposed amended complaint does not purport to be based on a change of law or the emergence of new facts that were not previously available to TST. To the contrary, as the magistrate judge correctly observed, most of the amended factual allegations in TST's proposed amended complaint are either matters of public record or involve facts that TST knew or had access to when it filed its original complaint.

In addition, TST did not seek to amend its complaint until the close of discovery, which was nearly two years after TST commenced this case and more than a year after the deadline to amend pleadings had passed. These significant delays also provide a basis for denying a motion to amend. *See, e.g.*, *Hammer v. City of Osage*, 318 F.3d 832, 844–45 (8th Cir. 2003) (affirming denial of motion to amend filed after discovery had closed); *Deutsche Fin. Servs. Corp v. BCS Ins. Co.*, 299 F.3d 692, 700 (8th Cir. 2002) (affirming denial of motion to amend in part because discovery had closed and time for amending pleadings had passed more than a year earlier); *Williams v. Little Rock Mun. Water Works*, 21 F.3d 218, 224 (8th Cir. 1994) (affirming denial of motion to amend made fourteen months after complaint was filed and six days after discovery deadline).

For these reasons, the magistrate judge's conclusion that TST failed to demonstrate good cause to amend the complaint is neither clearly erroneous nor contrary to law.

2. Futility

The magistrate judge's conclusion that TST failed to demonstrate good cause under Rule 15 was sufficient, without more, to deny TST's untimely motion for leave to amend the complaint. *See Shank*, 329 F.R.D. at 614. Nonetheless, the magistrate judge also concluded that TST's amended complaint is futile because TST failed to correct the deficiencies identified in this Court's July 31, 2020 Order, which dismissed the constitutional claims that TST sought to reassert. TST argues that this conclusion is

legally erroneous because the magistrate judge did not explain why TST's reasserted constitutional claims are futile.

A motion to amend a complaint may be denied for compelling reasons, including "futility of the amendment." *Id*. at 613 (internal quotation marks omitted). "An amendment is futile if the amended claim could not withstand a motion to dismiss under Rule 12(b)(6)." *Hillesheim v. Myron's Cards & Gifts, Inc.*, 897 F.3d 953, 955 (8th Cir. 2018) (internal quotation marks omitted).

A complaint must allege sufficient facts such that, when accepted as true, a facially plausible claim to relief is stated. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). If a complaint fails to state a claim on which relief can be granted, dismissal is warranted. Fed. R. Civ. P. 12(b)(6). When determining whether a complaint states a facially plausible claim, a district court accepts the factual allegations in the complaint as true and draws all reasonable inferences in the plaintiff's favor. *Blankenship v. USA Truck, Inc.*, 601 F.3d 852, 853 (8th Cir. 2010). Factual allegations must be sufficient to "raise a right to relief above the speculative level" and "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007). Mere "labels and conclusions" are insufficient, as is a "formulaic recitation of the elements of a cause of action." *Id.* at 555. Legal conclusions couched as factual allegations may be disregarded. *See id*. On a motion to dismiss, a district court may consider the complaint, exhibits attached to the complaint, and documents that are necessarily embraced by the complaint, without converting the motion into one for summary judgment. *Mattes v. ABC Plastics,*

Inc., 323 F.3d 695, 697 n.4 (8th Cir. 2003). The Court addresses, in turn, whether TST's proposed amended claims are futile.

a. TST's Proposed Amended Free-Speech Claim

TST's first proposed amended claim alleges violations of the Free Speech Clause of the First Amendment to the United States Constitution. The Court previously dismissed TST's free-speech claim because TST alleged "no facts demonstrating that [the Rescission Resolution] did not apply equally to all entities seeking to erect a display or that TST was the only organization excluded from displaying a monument in Veterans Memorial Park." *Satanic Temple I*, 475 F. Supp. 3d at 961.

"Congress shall make no law . . . abridging the freedom of speech." U.S. Const. amend. I. But one is not guaranteed "the right to communicate one's views at all times and places or in any manner that may be desired." *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 647 (1981). For example, the First Amendment "does not guarantee access to property simply because it is owned or controlled by the government." *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 803 (1985). And there is not a "private constitutional right to erect a structure on public property" because, if there were, "traditional public forums, such as our public parks, would be cluttered with all manner of structures." *Occupy Minneapolis v. County of Hennepin*, 866 F. Supp. 2d 1062, 1071 (D. Minn. 2011) (quoting *Lubavitch Chadbad House, Inc. v. City of Chicago*, 917 F.2d 341, 347 (7th Cir. 1990)). When, as here, the government establishes a limited public forum, any restriction on speech must be

viewpoint neutral and "reasonable in light of the purpose served by the forum." *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106–07 (2001). But the government need not keep a limited public forum open indefinitely. *See Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 46 (1983).

TST's amended free-speech claim does not correct the deficiencies identified in the Court's July 31, 2020 Order. Belle Plaine had no obligation to keep open indefinitely the limited public forum in Veterans Memorial Park. *See id.* And TST does not plausibly allege that Belle Plaine closed the limited public forum in a viewpoint-discriminatory manner—to the contrary, Belle Plaine closed the limited public forum entirely. Nor does TST plausibly allege that, while the limited public forum was open, Belle Plaine imposed any unreasonable viewpoint-discriminatory restrictions.

Accordingly, TST's proposed amended free-speech claim is futile.

b. TST's Proposed Amended Free-Exercise Claim

TST's second proposed amended claim alleges violations of the Free Exercise Clause of the First Amendment. The Court previously dismissed TST's free-exercise claim because TST failed to plausibly allege that Belle Plaine's closure of the limited public forum placed a substantial burden on TST's religious practices. *Satanic Temple I*, 475 F. Supp. 3d at 959.

To successfully plead a free-exercise violation, TST must establish that the governmental activity at issue places a substantial burden on its religious practice. *Patel v. U.S. Bureau of Prisons*, 515 F.3d 807, 813 (8th Cir. 2008). Free exercise of religion is

substantially burdened when a regulation "significantly inhibit[s] or constrain[s] conduct or expression that manifests some central tenet of a person's individual religious beliefs; . . . meaningfully curtail[s] a person's ability to express adherence to his or her faith; or den[ies] a person reasonable opportunity to engage in those activities that are fundamental to a person's religion." *United States v. Ali*, 682 F.3d 705, 709–10 (8th Cir. 2012) (internal quotation marks omitted). The Free Exercise Clause requires only that the law at issue is "neutral and generally applicable; incidental burdens on religion are usually not enough to make out a free exercise claim." *New Doe Child v. United States*, 901 F.3d 1015, 1025 (8th Cir. 2018).

In its proposed amended free-exercise claim, TST alleges that installing a monument in Veterans Memorial Park was "an expression of its core religious beliefs," which compel TST to "demand equal accommodation whenever a government opens the door to religion." These allegations do not plausibly allege a substantial burden on TST's religious practice. TST's allegations establish that Belle Plaine provided an equal accommodation by granting a limited-time permit to TST on the same terms as any other applicant. TST's allegations do not plausibly establish that Belle Plaine's closure of the limited public forum was not a neutral, generally applicable law. Indeed, when Belle Plaine closed the limited public forum, the closure applied equally to all. The government is constitutionally permitted to close a limited public forum. *See Perry Educ.*, 460 U.S. at 46. And the First Amendment does not include a constitutional right to use public property as a place of worship or to erect a private structure. *See, e.g.*,

Taylor v. City of Gary, 233 F. App'x 561, 562 (7th Cir. 2007) (observing that "the Free Exercise Clause does not give [plaintiff] the right to demand that the City provide him with municipally-owned property as a place of worship" (citing *Prater v. City of Burnside*, 289 F.2d 417, 427–28 (6th Cir. 2002)); *Knights of Columbus v. Town of Lexington*, 272 F.3d 25, 33 (5th Cir. 2001) (observing that "a total ban on unattended structures in a public forum would pass muster" and collecting cases (citing *Capitol Square Rev. & Advisory Bd. v. Pinette*, 515 U.S. 753 (1995))); *accord Occupy Minneapolis*, 866 F. Supp. 2d at 1071. The "Free Exercise Clause is written in terms of what the government cannot do to the individual, not in terms of what the individual can exact from the government." *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 451 (1988) (internal quotation marks omitted).

Accordingly, TST's proposed amended free-exercise claim is futile.

c. TST's Proposed Amended Establishment Clause Claim

TST's third proposed amended claim alleges that Belle Plaine's opening of the limited public forum in Veterans Memorial Park violated the Establishment Clause of the First Amendment because Belle Plaine acted with the purpose of promoting Christianity. TST did not previously assert such a claim.

The Establishment Clause prohibits Congress from making any law "respecting an establishment of religion." U.S. Const. amend. I. "It is an elemental First Amendment principle that government may not coerce its citizens to support or participate in any religion or its exercise." *New Doe Child*, 901 F.3d at 1023 (quoting *Town of Greece v.*

Galloway, 572 U.S. 565, 586 (2014)). But "[s]imply having religious content or promoting a message consistent with a religious doctrine does not run afoul of the Establishment Clause." *Van Orden v. Perry*, 545 U.S. 677, 690 (2005). Offense does not equate to coercion, as adults often encounter speech that they find disagreeable. *New Doe Child*, 901 F.3d at 1024 (citing *Galloway*, 572 U.S. at 589). As such, "an Establishment Clause violation is not made out any time a person experiences a sense of affront from the expression of contrary religious views." *Id.* at 1023–24 (quoting *Galloway*, 572 U.S. at 589). This is especially true in circumstances when any other member of the public is invited to express her or his own convictions. *Galloway*, 572 U.S. at 589.[8]

In its proposed amended complaint, TST alleges that one of its members saw the Christian monument in Veterans Memorial Park approximately twice daily and the Christian monument "offended [her] because it made her feel like a second class citizen in her own town." This allegation is insufficient to state a claim under the Establishment Clause, especially given that any member of the public could apply for a permit to place a monument in Veterans Memorial Park reflecting her or his own convictions. *Galloway*, 572 U.S. at 589. Indeed, as addressed above, TST's allegations reflect that Belle Plaine's temporary establishment of a limited public forum was viewpoint neutral on its face and

[8] TST argues that its Establishment Clause claim should be evaluated under the *Lemon* test. *See Lemon v. Kurtzman*, 403 U.S. 602 (1971). But the Supreme Court of the United States frequently has not applied the *Lemon* test, and repeatedly has criticized its application, particularly in the context of a "passive monument" erected on public property. *See Van Orden*, 545 U.S. at 686; *see also Am. Legion v. Am. Humanist Ass'n*, 139 S. Ct. 2067, 2080–81 (2019).

in effect. Pursuant to the Enacting Resolution and the permit Belle Plaine issued, TST had an equal opportunity to place its display in Veterans Memorial Park during the same timeframe that the Christian monument was on display. Moreover, TST's allegations reflect that the Christian monument was a "passive monument" that did not actively advance a particular religious doctrine or express hostility toward other religions. *See Van Orden*, 545 U.S. at 686, 691 (noting as significant the passive nature of the challenged monument, and contrasting that passivity with more active religious endorsement, such as government-compelled prayer).

Accordingly, TST's proposed amended Establishment Clause claim is futile.

d. TST's Proposed Amended Equal-Protection Claim

TST's fourth proposed amended claim alleges violations of the Equal Protection Clause of the Fourteenth Amendment. The Court previously dismissed TST's equal-protection claim because TST failed to plausibly allege that TST and Belle Plaine Veterans Club were similarly situated, that TST is part of a suspect class, or that the Rescission Resolution is either discriminatory on its face or has both a discriminatory purpose and discriminatory impact. *Satanic Temple I*, 475 F. Supp. 3d at 962.

The Equal Protection Clause provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. To state an equal-protection claim, a complaint must allege that the plaintiff was "treated differently than other persons who were in all relevant respects similarly situated." *Schmidt v. Des Moines Pub. Sch.*, 655 F.3d 811, 820 (8th Cir. 2011) (internal quotation

marks omitted). In doing so, a plaintiff must allege that the challenged law or government action either is discriminatory on its face or has both a discriminatory purpose and discriminatory impact. *See Washington v. Davis*, 426 U.S. 229, 242 (1976).

In its proposed amended complaint, TST again alleges that Belle Plaine received disparate treatment as compared to the Belle Plaine Veterans Club.[9] Even assuming that TST and the Belle Plaine Veterans Club are similarly situated, TST fails to plead a viable equal-protection claim with respect to the Enacting Resolution and the Rescission Resolution because TST does not allege that either policy is discriminatory on its face or has a discriminatory purpose or impact. *See Mitchell v. Dakota Cnty. Soc. Servs.*, 357 F. Supp. 3d 891, 902 (D. Minn. 2019) (citing *Davis*, 426 U.S. at 242).

As the Court observed when it previously dismissed TST's equal-protection claim, the text of the challenged policies demonstrates that both policies applied equally to all entities that sought to erect a display in Veterans Memorial Park. *Satanic Temple I*, 475 F. Supp. 3d at 963. TST again alleges that the Belle Plaine Veterans Club was able to erect and voluntarily remove its display prior to the passage of the Rescission Resolution. But this difference in treatment is attributable to *when* Belle Plaine enacted the Rescission Resolution in relation to the completion of each group's display. TST does *not* allege facts demonstrating that Belle Plaine had control over whether the Belle Plaine Veterans Club erected its display earlier than TST erected its display. TST alleges that

[9] TST also alleges disparate treatment as compared to the nonprofit organization Alliance Defending Freedom (ADF). But because TST does not allege any facts about whether TST and ADF are similarly situated, TST does not state an equal-protection claim as to ADF.

Belle Plaine took longer to approve TST's permit application than the Belle Plaine Veterans Club's permit application. But it is undisputed that both entities received a permit on the same day, and both entities' permits were terminated at the same time. In short, with respect to the Enacting Resolution and the Rescission Resolution, TST's allegations do not plausibly allege disparate treatment or disparate impact, as required to state an equal-protection claim.

TST's proposed amended equal-protection claim also alleges that Belle Plaine did not provide TST with equal access to the policymaking process.[10] The United States Constitution "does not grant to members of the public generally a right to be heard by public bodies making decisions of policy." *Minn. State Bd. for Cmty. Colls. v. Knight*, 465 U.S. 271, 283 (1984) (citing *Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441 (1915)). "Plainly, public bodies may confine their meetings to specified subject matter and may hold non-public sessions to transact business." *Id.* at 284 (quoting *City of Madison Joint Sch. Dist. v. Wis. Emp. Rels. Comm'n*, 429 U.S. 167, 175 n.8 (1976)). In *Knight*, the Supreme Court elaborated on this point:

> Policymaking organs in our system of government have never operated under a constitutional constraint requiring them to afford every interested member of the public an opportunity to present testimony before any policy is adopted.

[10] Notably, TST does not allege that it is similarly situated to the Belle Plaine Veterans Club as to each entity's access to Belle Plaine policymakers. TST and its directors are not located in Minnesota, whereas the Belle Plaine Veterans Club is in Belle Plaine. This geographic difference is relevant to each entity's respective ease of access to Belle Plaine's policymakers. Moreover, a city's mayor and city council reasonably would be expected to prioritize communicating with, and addressing the concerns of, local constituents in contrast to an out-of-state organization and its directors.

> Legislatures throughout the nation, including Congress, frequently enact bills on which no hearings have been held or on which testimony has been received from only a select group. Executive agencies likewise make policy decisions of widespread application without permitting unrestricted public testimony. Public officials at all levels of government daily make policy decisions based only on the advice they decide they need and choose to hear. To recognize a constitutional right to participate directly in government policymaking would work a revolution in existing government practices.

Id. The Supreme Court concluded that the appellees' purported "interest in a government audience for their policy views . . . finds no special protection in the Constitution," and rejected appellees' claims under both the First Amendment and the Equal Protection Clause. *Id.* at 291.

TST alleges that Belle Plaine gave the Belle Plaine Veterans Club "unique access to assist in the modifications of the proposal" for the Enacting Resolution but "did not give the same benefit to . . . TST." For example, TST alleges that Belle Plaine's policymakers had "off-the-record" conversations with members of the Belle Plaine Veterans Club. But these facts, even if true, cannot establish a constitutional violation. "Absent statutory restrictions, the state must be free to consult or not to consult whomever it pleases" with respect to policymaking.[11] *Id.* at 285. Moreover, TST does not allege that Belle Plaine denied TST *complete* access to the process. The allegations recount numerous city council meetings and other correspondence between TST and Belle Plaine's city personnel. And the proposed amended complaint reflects that TST

[11] Although TST's proposed amended complaint contends that Belle Plaine violated Minnesota's statutory open-meeting laws, TST does not advance any statutory claims in its proposed amended complaint.

had private off-the-record conversations with city personnel. For instance, TST alleges that "[s]hortly before the [city council] meeting, . . . TST called the City Attorney to remind the City of its intent to place a display if the Park was opened to private monuments." Notably, TST does not allege that it ever requested, but was denied, an opportunity to have private off-the-record communications with Belle Plaine's policymakers. Thus, TST undisputedly had access to Belle Plaine's policymakers.

For these reasons, TST's proposed amended equal-protection claim is futile.

e. TST's Proposed Amended Due-Process Claim

TST's last proposed amended claim alleges violations of the Due Process Clause of the Fourteenth Amendment. TST did not previously assert such a claim.

Procedural-due-process claims are reviewed in two steps. *Senty-Haugen v. Goodno*, 462 F.3d 876, 886 (8th Cir. 2006). The first step is to determine whether the plaintiff has been deprived of a protected liberty or property interest. *Id.* If no liberty or property interest exists, there can be no due-process violation. *See Dobrovolny v. Moore*, 126 F.3d 1111, 1113 (8th Cir. 1997). If the plaintiff has a protected liberty or property interest, however, the second step is to consider what process is due. *Senty-Haugen*, 462 F.3d at 886 (citing *Mathews v. Eldridge*, 424 U.S. 319, 332-35 (1976)).

TST alleges that, "[b]y providing TST with a one-year permit, [Belle Plaine] conveyed to TST a vested, protectible property right." This allegation is incorrect both factually and legally. This allegation is factually incorrect because, as addressed above, Belle Plaine did not provide TST with a one-year permit. Rather, Belle Plaine provided

TST with a permit for *up to* one year that could be terminated by Belle Plaine at any time with ten days' notice. And Belle Plaine provided the requisite ten days' notice.

This allegation also is legally incorrect because Minnesota law does not recognize a constitutionally protected property interest in the permit TST received. "Protected property interests are created by state law, but federal law determines whether the interest rises to the level of a constitutionally-protected property interest." *Ellis v. City of Yankton*, 69 F.3d 915, 917 (8th Cir. 1995). Minnesota law "limit[s] the property rights that are entitled to due process to real property rights, final judgments, and certain vested statutory rights." *Schatz v. Interfaith Care Ctr.*, 811 N.W.2d 643, 658 (Minn. 2012). A protected property interest is "a legitimate claim to entitlement . . . as opposed to a mere subjective expectancy." *Bituminous Materials, Inc. v. Rice County*, 126 F.3d 1068, 1070 (8th Cir. 1997) (internal quotation marks omitted). "A claim to entitlement arises, for these purposes, when a statute or regulation places substantial limits on the government's exercise of its licensing discretion." *Id.* Here, pursuant to the Enacting Resolution, Belle Plaine reserved the right to close the limited public forum in Veterans Memorial Park and terminate TST's permit at any time with ten days' notice. And, as addressed above, Belle Plaine had no constitutional obligation to keep the limited public forum open indefinitely. *See Perry Educ.*, 460 U.S. at 46. As such, TST has not alleged the existence of a protected property interest.

Accordingly, TST's proposed amended due-process claim is futile.

In summary, the magistrate judge's denial of TST's untimely motion to amend the complaint, based on both TST's failure to demonstrate good cause and the futility of TST's proposed amended claims, is affirmed.

III. Belle Plaine's Motion to Dismiss (*Satanic Temple II*)

Belle Plaine also moves to dismiss the complaint in *Satanic Temple II*, arguing that TST's claims are barred by res judicata based on *Satanic Temple I* and, in the alternative, that TST fails to state a claim on which relief can be granted.

A. Res Judicata

"Under the doctrine of res judicata, a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action." *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 n.5 (1979). Res judicata, also known as claim preclusion, "precludes the relitigation of a claim on grounds that were raised or could have been raised in the prior action." *Lane v. Peterson*, 899 F.2d 737, 741 (8th Cir. 1990). The defense of res judicata may be raised in a motion to dismiss when the defense can be established from the face of the pleadings, including the complaint, materials attached to the complaint, and public records and materials embraced by the complaint. *C.H. Robinson Worldwide, Inc. v. Lobrano*, 695 F.3d 758, 763–64 (8th Cir. 2012).

Federal law applies to the res judicata analysis here because *Satanic Temple I* was a federal-question case decided by this Court. *See Schaefer v. Putnam*, 827 F.3d 766, 769 (8th Cir. 2016) ("The law of the forum that rendered the first judgment controls the res judicata analysis." (internal quotation marks omitted)). Under federal law, claim

preclusion applies "when (1) the first suit resulted in a final judgment on the merits; (2) the first suit was based on proper jurisdiction; (3) both suits involve the same parties (or those in privity with them); and (4) both suits are based upon the same claims or causes of action." *Elbert v. Carter*, 903 F.3d 779, 782 (8th Cir. 2018) (internal quotation marks omitted).

TST does not dispute that this Court had proper jurisdiction over *Satanic Temple I*, that both lawsuits involve the same parties, and that both lawsuits are based on the same claims or causes of action. And the record clearly demonstrates that these res judicata factors are established here. Accordingly, the only dispute as to res judicata is whether *Satanic Temple I* resulted in a final judgment on the merits as to the claims TST asserts in *Satanic Temple II*.

"The denial of a motion to amend a complaint in one action is a final judgment on the merits barring the same complaint in a later action." *Pro. Mgmt. Assocs., Inc. v. KPMG LLP*, 345 F.3d 1030, 1032 (8th Cir. 2003) (citing *Landscape Props., Inc. v. Whisenhunt*, 127 F.3d 678, 683 (8th Cir. 1997)). "Denial of leave to amend constitutes res judicata on the merits of the claims [that] were the subject of the proposed amended pleading." *Id.* (quoting *King v. Hoover Grp., Inc.*, 958 F.2d 219, 222–23 (8th Cir. 1992)). "This is so even when denial of leave to amend is based on reasons other than the merits, such as timeliness." *Id.* (citing *N. Assurance Co. v. Square D Co.*, 201 F.3d 84, 88 (2d Cir. 2000), and *Poe v. John Deere Co.*, 695 F.2d 1103, 1107 (8th Cir. 1982)).

Here, TST's complaint in *Satanic Temple II* undisputedly is based on TST's proposed amended complaint in *Satanic Temple I*, the filing of which was denied based on both futility and lack of good cause due to TST's untimeliness and lack of diligence. Indeed, the first page of TST's complaint in *Satanic Temple II* includes an "explanatory note" that provides as follows:

> 1. This complaint is intended to correct the pleading deficiencies identified in the Court's order of dismissal without prejudice of the constitutional issues in a sister case for lack of factual detail. . . . The core factual allegations are still the same: essentially taking issue with the fact that the City opened a limited public forum to promote a Christian monument but closed it to exclude a Satanic one.
>
> 2. A version of this complaint was proposed as an amended complaint in the same case. . . . But the Magistrate rejected it.

The substance of the complaint in *Satanic Temple II* is, in all material respects, identical to the content of the proposed amended complaint in *Satanic Temple I*.[12] Thus, the magistrate judge's denial of TST's motion to amend the complaint in *Satanic Temple I* operates as "a final judgment on the merits barring the same complaint" in *Satanic Temple II*. *See Pro. Mgmt. Assocs.*, 345 F.3d at 1032.

TST attempts to avoid this result, arguing that the denial of its motion to amend the complaint in *Satanic Temple I* is not a judgment on the merits as to those claims because (1) a magistrate judge lacks authority to enter a final judgment on the merits and

[12] The complaint in *Satanic Temple II* includes three additional claims alleging violations of the Minnesota Constitution, but these claims are based on the same factual allegations as TST's federal constitutional claims.

(2) the denial of leave to amend a complaint is not a judgment on the merits when the claims previously were dismissed without prejudice. Both of TST's arguments lack merit.

TST first contends that res judicata cannot apply because the denial of TST's motion to amend in *Satanic Temple I* was decided by a magistrate judge. It is within a magistrate judge's authority to deny a motion to amend a pleading. 28 U.S.C. § 636(b)(1)(A). It "is widely accepted that appeal is the plaintiff's only recourse when a motion to amend is denied." *Arrigo v. Link*, 836 F.3d 787, 799 (7th Cir. 2016) (internal quotation marks omitted); *accord Poe*, 695 F.2d at 1107 (observing that plaintiff "could have appealed from the denial of her motion to amend [but] did not").[13] For res judicata purposes, it is immaterial whether the denial of a motion to amend was rendered by a magistrate judge. *See, e.g.*, *Curtis v. Citibank, N.A.*, 226 F.3d 133, 136, 140–41 (2d Cir. 2000) (holding that claims in second lawsuit were barred by res judicata because magistrate judge denied leave to amend complaint to add those claims in first lawsuit). TST correctly observes that a magistrate judge cannot render a final decision on a dispositive motion. *See* 28 U.S.C. § 636(b)(1). But this observation is immaterial. When a motion to amend is denied, the reason that such a ruling has preclusive effect on

[13] Notably, as in *Poe*, in which the Eighth Circuit held that res judicata barred claims that were the subject of an unsuccessful motion to amend, here TST similarly did not appeal the substance of the magistrate judge's denial of its motion to amend the complaint. Instead, when appealing the magistrate judge's order in *Satanic Temple I*, TST argued that its motion to amend the complaint is "mooted" by *Satanic Temple II*. TST's logic is backwards—its proper recourse was to appeal the denial of its motion to amend the complaint, not to file a new lawsuit.

a subsequent lawsuit is not because the denial of leave to amend is dispositive. *See N. Assurance Co.*, 201 F.3d at 88 (observing that "it is not the actual decision to deny leave to amend that forms the basis of the bar"). Instead, the preclusive effect "is based on the requirement that the plaintiff must bring all claims at once against the same defendant relating to the same transaction or event." *Id.* "Thus, the actual decision denying leave to amend is no more than a proxy to signify at what point claims have been forfeited due to a plaintiff's failure to pursue all claims against a particular defendant in one suit." *Id.*

TST also contends that the denial of leave to amend the complaint is not a judgment on the merits when the claims previously were dismissed without prejudice. It is true that this Court's July 31, 2020 Order dismissed TST's constitutional claims without prejudice. It also is true, contrary to Belle Plaine's arguments, that the dismissal of a claim without prejudice is *not* a judgment on the merits. *See Jaramillo v. Burkhart*, 59 F.3d 78, 79 (8th Cir. 1995) (observing that, "unlike a dismissal without prejudice, a dismissal with prejudice operates as a rejection of the plaintiff's claims on the merits"). But these observations, although true, are beside the point. The preclusive effect on *Satanic Temple II* does not arise from this Court's July 31, 2020 dismissal of TST's claims without prejudice in *Satanic Temple I*. Rather, the preclusive effect on *Satanic Temple II* arises from the denial of TST's untimely and futile motion to amend the complaint in *Satanic Temple I*.

In support of its argument, TST relies on *Kulinski v. Medtronic Bio-Medicus, Inc.*, in which the Eighth Circuit concluded that the denial of a motion to amend the complaint

in an earlier action was not an adjudication on the merits. 112 F.3d 368, 373. But in *Kulinski*, unlike in this case, the first lawsuit was dismissed for lack of subject-matter jurisdiction. *Id.* Significantly, res judicata requires that the "first suit was based on proper jurisdiction." *Elbert*, 903 F.3d at 782. Because *Kulinski* involved a prior dismissal based on lack of subject-matter jurisdiction, it is inapposite. *See Crystal Import Corp. v. AVID Identification Sys., Inc.*, 582 F. Supp. 2d 1166, 1170 n.4 (D. Minn. 2008) (applying res judicata and similarly distinguishing *Kulinski* "because the denial of the motion to amend in that decision was rendered by a court lacking subject-matter jurisdiction" and "[i]mplicitly therefore, all decisions of the court were then invalidated"). TST's reliance on *Kulinski* is misplaced.

Nor is it material that *Satanic Temple I* remained ongoing when TST filed its complaint in *Satanic Temple II*. Indeed, courts apply res judicata to claims that were the subject of an unsuccessful motion to amend even if, as here, the first-filed lawsuit had not yet reached its conclusion when the plaintiff filed a second lawsuit. *See, e.g.*, *Curtis*, 226 F.3d at 136, 140 (applying res judicata to duplicative claims in second lawsuit filed while first lawsuit remained ongoing); *Crystal Import*, 582 F. Supp. 2d at 1170 (same); *see also Arrigo*, 836 F.3d at 799–800 (rejecting argument that applying res judicata was premature before the first-filed action had reached final judgment). The *Curtis* decision is instructive. In *Curtis*, as here, after a magistrate judge denied a motion to amend the complaint, the plaintiffs "appealed this denial to the district court and, while waiting for that court to rule, filed their proposed second amended complaint as a new complaint."

226 F.3d at 136. The Second Circuit held that the plaintiff was barred by res judicata from filing a duplicative complaint alleging "claims arising out of the same events" as those alleged in the first lawsuit:

> If plaintiffs had timely raised those allegations, they would have been heard in *Curtis I*. By filing them in a second action, plaintiffs attempted to avoid the consequences of their delay. It was not an abuse of discretion to prevent them from doing so.

Id. at 140. Here, like the circumstances in *Curtis*, TST attempted to avoid the consequences of the magistrate judge's ruling in *Satanic Temple I* by filing *Satanic Temple II*.

Significantly, the doctrine of res judicata reflects the principle that courts should not be "required to adjudicate, nor defendants to address, successive actions arising out of the same transaction, asserting breach of the same duty." *Nilsen v. City of Moss Point*, 701 F.2d 556, 563 (5th Cir. 1983) (observing that to "reward [plaintiff] for her own delinquency by permitting her to maintain [a successive] action" after the denial of an untimely motion to amend in an earlier action "would be clearly at variance with this principle"). To allow TST's second lawsuit to continue would render meaningless this Court's decision to uphold the magistrate judge's denial of TST's untimely and futile motion for leave to amend its complaint to add the same claims in its first lawsuit. *See Arrigo*, 836 F.3d at 799 (reaching same conclusion in analogous circumstances).

For these reasons, res judicata bars TST's complaint in *Satanic Temple II*, and Belle Plaine's motion to dismiss on this basis is granted.[14]

IV. Belle Plaine's Motion for Sanctions (*Satanic Temple II*)

Belle Plaine moves for sanctions against TST's counsel pursuant to Federal Rule of Civil Procedure 11, arguing that the filing of *Satanic Temple II* is a frivolous attempt to circumvent the rulings in *Satanic Temple I* and waste judicial resources. Specifically, Belle Plaine seeks the attorneys' fees it incurred responding to the complaint and seeking sanctions in *Satanic Temple II*.

Rule 11 of the Federal Rules of Civil Procedure requires a party to certify, for any pleading or motion, that:

> (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
>
> (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

[14] In light of this conclusion, the Court need not address Belle Plaine's alternative argument for dismissal for failure to state a claim. *See* Fed. R. Civ. P. 12(b)(6). But even if *Satanic Temple II* were not barred by res judicata, all of TST's claims in *Satanic Temple II* fail to state a claim for the same reasons addressed above pertaining to the futility of TST's proposed amended complaint in *Satanic Temple I*.

> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

Fed. R. Civ. P. 11(b). To fulfill this obligation, Rule 11 requires counsel to "conduct a reasonable inquiry of the factual and legal basis for a claim before filing." *Coonts v. Potts*, 316 F.3d 745, 753 (8th Cir. 2003). An attorney is subject to sanctions if a "reasonable and competent" attorney would not believe in the legal merit of the argument. *Id.*

When determining whether Rule 11 sanctions are warranted, a district court must use an objective standard of reasonableness and consider factors such as the alleged wrongdoer's history, the severity of the violation and the degree to which malice or bad faith contributed to the violation. *See Pope v. Fed. Express Corp.*, 49 F.3d 1327, 1328 (8th Cir. 1995); *Isakson v. First Nat'l Bank*, 985 F.2d 984, 986 (8th Cir. 1993). A sanction imposed under Rule 11 "must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated." Fed. R. Civ. P. 11(c)(4).

The Eighth Circuit repeatedly and unequivocally has held that "a district court abuses its discretion by refusing to sanction a plaintiff and his counsel under Rule 11 for filing and maintaining a frivolous lawsuit when the plaintiff seeks to relitigate claims [the plaintiff] had been denied leave to serve against the same defendant in an earlier lawsuit." *Pro. Mgmt. Assocs.*, 345 F.3d at 1033 ("Given the well-settled law of res judicata under the circumstances in this case, [plaintiff's] counsel should have known" that its second

lawsuit was barred by the denial of a motion to amend the complaint in its first lawsuit); *King*, 958 F.2d at 223 (concluding that "the district court erred in determining that sanctions and costs were inappropriate" because "counsel should have realized that *King II* was barred by *King I* because of the identity of the facts and issues"); *accord Landscape Props.*, 127 F.3d at 683 (affirming district court's award of Rule 11 sanctions in the same circumstances); *see also Meyer v. U.S. Bank Nat'l Ass'n*, 792 F.3d 923, 927 (8th Cir. 2015) (observing that Eighth Circuit has "repeatedly approved sanctions in cases where plaintiffs attempted to evade the clear preclusive effect of earlier judgments"). After the magistrate judge denied TST's motion to amend its complaint, TST's recourse "was to appeal, not to start a new action." *Airframe Sys., Inc. v. Raytheon Co.*, 601 F.3d 9, 16 (1st Cir. 2020); *accord Arrigo*, 836 F.3d at 799 (7th Cir. 2016); *Poe*, 695 F.2d at 1107. TST did not do so here, but instead improperly filed a second frivolous lawsuit.[15] This tactic resulted in a waste of resources, both for Belle Plaine and for the Court. *See Arrigo*, 836 F.3d at 799–800 (observing, in analogous circumstances, that plaintiff's tactics wasted the resources of the court and the parties).

For these reasons, Belle Plaine's motion for sanctions, in the form of the attorneys' fees Belle Plaine incurred responding to the complaint and seeking sanctions in *Satanic Temple II*, is granted.

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[15] Moreover, when TST subsequently appealed the magistrate judge's order in *Satanic Temple I* on other grounds, TST argued that its motion for leave to amend the complaint should be "denied as moot" and that the magistrate judge's order should be "vacated." Thus, TST did not even *attempt* to pursue its proper recourse.

ORDER

Based on the foregoing analysis and all the files, records and proceedings herein, **IT IS HEREBY ORDERED**:

1. Defendant's motion for summary judgment as to Plaintiff's promissory-estoppel claim in *Satanic Temple I*, No. 19-cv-1122, (Dkt. 81), is **GRANTED**.

2. Plaintiff's motion to strike in *Satanic Temple I*, No. 19-cv-1122, (Dkt. 100), is **DENIED**.

3. The magistrate judge's January 26, 2021 Order in *Satanic Temple I*, No. 19-cv-1122, (Dkt. 79), is **AFFIRMED**.

4. Defendant's motion to dismiss the complaint in *Satanic Temple II*, No. 21-cv-0336, (Dkt. 10), is **GRANTED**.

5. Plaintiff's motion to strike in *Satanic Temple II*, No. 21-cv-0336, (Dkt. 29), is **DENIED**.

6. Defendant's motion for sanctions in *Satanic Temple II*, No. 21-cv-0336, (Dkt. 17), is **GRANTED**. Within fourteen days after the date of this Order, Defendant shall file a motion and supporting evidence as to the attorneys' fees Defendant incurred responding to the complaint and seeking sanctions in *Satanic Temple II*, No. 21-cv-0336.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: September 15, 2021

s/Wilhelmina M. Wright
Wilhelmina M. Wright
United States District Judge