

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

UNITED FEDERATION OF CHURCHES,
LLC (dba "THE SATANIC TEMPLE")

Plaintiff/Counterclaim
Defendant,

v.

DAVID ALAN JOHNSON (AKA "ADJ"),
LEAH FISHBAUGH, MICKEY MEEHAN,
and NATHAN SULLIVAN,

Defendants/
Counterclaimants

No. 23-2-06120-9 SEA

**DEFENDANTS' REPLY IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

Defendants incorporate their Opposition to UFC's Motion for Partial Summary Judgment (Sub. No. 43).

A. UFC's Claims Are Time Barred.

1. When UFC Voluntarily Dismissed the Federal Action, It Lost the Benefit of 28 U.S.C. § 1367(d).

UFC agrees that its claims accrued in March of 2020 and are subject to a three-year statute of limitations. UFC's original complaint in this Court was filed on April 5, 2023, more than three years after the claims accrued. UFC does not dispute that it voluntarily dismissed the federal case after the Ninth Circuit remanded it. Response at 6.

1 UFC argues that the tolling analysis in *Artis v. District of Columbia*, 583 U.S. 71
2 (2018), governs. However, *Artis* applies when a plaintiff’s case is not voluntarily dismissed.
3 *Holt v. County of Orange*, 91 F.4th 1013, 1020 (9th Cir. 2024), clarified that if a plaintiff
4 voluntarily dismisses its federal case, Section 1367(d)’s tolling does not apply. UFC could
5 have proceeded with the jurisdictional discovery in federal court and, if it had succeeded in
6 establishing the required jurisdictional amount, its state law claims would have proceeded
7 there under diversity jurisdiction. Pursuant to *Holt*, because UFC voluntarily dismissed the
8 federal action while its state law claims were once again in play, the tolling provision in 28
9 U.S.C. § 1367(d) does not apply and UFC’s voluntary dismissal “leaves the situation the
10 same as if the [federal] suit had never been brought in the first place.” *Id.* Accordingly, UFC’s
11 claims are time barred.¹

12 **2. UFC’s Replevin and Breach of Fiduciary Duty Claims Are Independently**
13 **Time Barred.**

14 UFC’s replevin and breach of fiduciary duty claims were not part of the federal case
15 and were never subject to 28 U.S.C. §1367(d). UFC asserts that these claims arose from the
16 same case or controversy as its other claims. Response at 13 n.1. Whether these claims could
17 have been brought in the federal case is irrelevant. Section 1367(d) does not apply to
18 unasserted claims, even if they arise from the same case or controversy. *In re Vertrue Mktg.*
19 *& Sales Pracs. Litig.*, 712 F. Supp. 2d 703, 721 (N.D. Ohio 2010), *aff’d sub nom. In re Vertrue*
20 *Inc. Mktg. & Sales Pracs. Litig.*, 719 F.3d 474 (6th Cir. 2013) (“[O]nly those state law claims
21 actually asserted in *Sanford* [the prior federal action] are subject to statutory tolling.”). UFC’s
22 replevin and fiduciary duty claims are time barred.

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24
25 ¹Defendants’ counsel’s May 2023 letter noting that 28 U.S.C. § 1367(d) may apply to the
26 tortious interference claims does not change the analysis. It was sent prior to UFC’s success
in November of 2023 in reviving a state law claims and UFC’s voluntary dismissal of the
federal case in January of 2024.

1 **B. UFC’S Tortious Interference, Conversion, Trespass and Replevin Claims Fail.**

2 **1. UFC Has No Standing.**

3 In addition to being time barred, UFC’s claims fail because UFC has not established
4 that UFC, versus the non-party Washington Chapter, had interests in the Facebook Pages.
5 Defendants’ Motion for Summary Judgment (“Motion”), 18-19. For example, for its tortious
6 interference claim, UFC alleges that the relationship at issue was the Chapter’s relationship
7 with Facebook (not UFC’s). However, a principal organization, such as a parent corporation,
8 does not have standing to sue for tortious inference of its subsidiary’s relationship with a third
9 party. Motion, 19-20. UFC does not dispute this established principle. Instead, UFC tries to
10 sidestep its lack of standing by contradicting its own clear admissions that its chapters are
11 autonomous. Its prior admissions control. *See* Complaint, Sub. No. 15, ¶12 (describing
12 Washington Chapter as “largely autonomous”); Roller Decl. ¶3, Ex. 2 (8-10) (UFC’s own
13 “Chapter Handbook” states that Chapters are “self-organized, volunteer-led groups” that are
14 “autonomous entities”). But even if UFC controls the chapters, which it does not, a principal
15 organization lacks standing to sue for a subsidiary’s alleged relationship.

16 UFC also points to affiliation agreements with individuals for its alleged ownership
17 of the Chapter’s Facebook accounts. Response at 19-20. But the affiliation agreements do not
18 grant UFC ownership. *See* Sub No. 43, 17-18. Moreover, UFC does not dispute that it had no
19 affiliation agreement with the Washington Chapter in March of 2020. Response at 14-15.
20 Although UFC points to prior affiliation agreements with several individuals, its claims are
21 based on allegations that Defendants took the *Chapter’s* Facebook pages (not *individuals’*
22 pages) and the relationship upon which UFC bases its tortious interference claims was the
23 Chapter’s relationship with Facebook in March of 2020. Complaint ¶59. UFC lacks standing
24 to sue.

1 **2. The Interests in the Memes Page Were Relinquished.**

2 **a. The Chapter Had Authority to Relinquish the Memes Page.**

3 To the extent UFC is deemed to stand in the shoes of the Washington Chapter, its
4 interests relating to the Memes Page were unequivocally relinquished by the Chapter’s
5 leaders pursuant to their direct or apparent authority. First, UFC does not dispute that the
6 Chapter’s two leaders expressly, publicly, and unequivocally relinquished all interest in the
7 Memes Page and told Defendants it was theirs to use “free and clear.” Second, although UFC
8 questions the Media Liaison’s authority to relinquish the Memes Page, it does not address or
9 dispute that the Chapterhead, “Siri Sanguine,” also participated in the relinquishment and that
10 she had clear authority to make decisions on behalf of the Chapter. Third, Case’s individual
11 affiliation agreement, to which UFC points as a limitation on his authority, does no such
12 thing. *See* Sub. No. 43, 17-18. To the extent his affiliation agreement is deemed to have
13 created a contractual right as between Case and UFC regarding UFC’s access to a social
14 media page, UFC’s claim for breaching that provision would be against Case, not Defendants.

15 **b. Alternatively, Estoppel Bars UFC’s Claims.**

16 Alternatively, to the extent UFC is deemed to stand in the Washington Chapter’s
17 shoes, this is a textbook case for estoppel. UFC’s request for additional discovery relating to
18 Defendants’ state of mind is a red herring. Whether the Defendants believed the Memes Page
19 was originally “stolen” before the Chapter relinquished it, or whether Defendants had clean
20 hands prior to the relinquishment, are irrelevant. There is no dispute that the Chapter’s leaders
21 were fully aware of Defendant Powell’s conduct when they relinquished all interests in the
22 Memes Page. How Defendants subjectively viewed Powell’s conduct before relinquishment
23 means nothing. The only relevant inquiry is whether Defendants reasonably relied on the
24 Chapter’s subsequent express relinquishment. Defendants’ declarations establish that they
25 did and reasonable minds could not disagree that it was appropriate to rely on the
26 unequivocal, public statements by the Chapter’s leaders that the Memes Page was Defendants

1 to use “free and clear.” Motion at 24-25.²

2 Finally, UFC argues that it revoked relinquishment of the Memes Page. This is beside
3 the point. The Washington Chapter never revoked its express relinquishment or sought the
4 return of the Memes Page. While UFC may have a dispute with the Washington Chapter (or
5 “Sanguine” or Case) as to the Chapter’s decision to relinquish the Memes Page, that the
6 Chapter did relinquish its interests and has never revoked that relinquishment is not in
7 dispute.

8 **3. UFC Has Not Shown Actual Damages for its Tortious Interference Claim.**

9 In addition to failing for the reasons set forth above, UFC’s tortious interference claim
10 fails because UFC has not shown the required actual damages that were proximately caused
11 by the alleged interference. *Pleas v. City of Seattle*, 112 Wn.2d 794, 803-04 (1989); *Sunland*
12 *Invs. v. Graham*, 54 Wn. App. 361, 364 (1989). First, UFC fails to articulate how UFC, versus
13 the non-party Washington Chapter, has been damaged. Response at 22-23. Second, UFC has
14 not identified any actual damages (e.g., lost profits) suffered by either UFC or the Chapter
15 that were proximately caused by the alleged interference. Instead, UFC articulates only
16 equitable, restitution damages such as disgorgement of Defendants’ alleged profits or the
17 value to Defendants in using the pages.³ Response at 23-24. However, Defendants’ alleged
18 profits do nothing to cure UFC’s fundamental failure to allege its own actual damages.⁴ *Life*
19 *Designs Ranch, Inc. v. Sommer*, 191 Wn. App. 320, 338 (2015) (dismissing tortious

20 _____
21 ² To the extent UFC is seeking a CR 56(f) extension, it has failed to submit the required CR
22 56(f) declaration.

23 ³ UFC’s assertion that it is entitled to punitive damages is meritless. Washington has a strong
24 public policy against punitive damages, *Dailey v. N. Coast Life Ins. Co.*, 129 Wn. 2d 572,
574 (1996), and Washington law applies to this case, which involves alleged conduct in
Washington, by and about a Washington Chapter and Washington Defendants.

25 ⁴ UFC’s contention that Defendants have failed to meet their discovery obligations is
26 disingenuous. UFC did not issue any discovery requests in this case until July 31, 2024, with
the responses due August 31, 2024. Defendants timely submitted their objections and
responses on August 30 and are gathering and producing responsive documents.

1 interference claim for failure to show actual damages).

2 **C. UFC Fails to Allege a Fiduciary Relationship Between UFC and Defendants.**

3 To state a claim for breach of fiduciary duty, UFC must establish that it had a fiduciary
4 relationship with Defendants. *Micro Enhancement Int'l, Inc. v. Coopers & Lybrand, LLP*,
5 110 Wn. App. 412, 433-34 (2002). UFC offers no evidence of any relationship with
6 Defendants, who were members of the autonomous Washington Chapter. All UFC offers is
7 the vague, conclusory statement that “TST’s agents operated TST’s social media pages ‘as’
8 and ‘for’ TST.” Response at 16. Conclusory statements cannot defeat summary judgment.
9 *Hamblin v. Castillo Garcia*, 23 Wn. App. 2d 814, 831 1091 (2022). UFC also offers
10 unsupported speculation that Defendants must have had awareness of UFC’s “status as the
11 ultimate principal” because Defendants admitted that their volunteer roles with the Chapter
12 involved helping with “TST’s social media.” Response at 16. However, Defendants
13 understood that they were only volunteering with the local Washington Chapter (which at
14 times they sometimes referred to as “TST”). Johnson Reply Decl., ¶¶3-4; Sullivan Reply
15 Decl., ¶¶3-4; Powell Reply Decl., ¶¶3-4; Fishbaugh Decl., ¶¶3-4.

16 **D. UFC Does Not Contest Dismissal of the Documents Claims.**

17 UFC does not dispute Defendants’ arguments seeking dismissal of the conversion and
18 trespass claims relating to documents allegedly in Sullivan’s possession. These claims must
19 be dismissed.

20 **E. Defendants Are Entitled to Declaratory Judgment.**

21 Contrary to UFC’s assertion that Defendants seek relief for an affirmative defense,
22 Defendants have asserted a counterclaim for declaratory judgment, seeking a declaration of
23 their right to use the Memes Page. RCW 7.24.010 specifically allows such a determination,
24 to which the undisputed facts show Defendants are entitled.

1 **CONCLUSION**

2 The Court should dismiss UFC’s claims and grant Defendants’ request for declaratory
3 relief.

4
5 *I certify this memorandum contains 1,749
6 words in compliance with the Local Rules.*

7 DATED: September 16, 2024.

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this date I caused true and correct copies of the foregoing
3 document to be served upon the following, at the addresses stated below, via the method of
4 service indicated.

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16 Dated this 16th day of September, 2024 in Seattle, Washington.

17 /s/ Kaila Greenberg
18 Kaila Greenberg
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