

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’ MOTION FOR
SUMMARY JUDGMENT**

I. INTRODUCTION

Defendants David Johnson, Leah Fishbaugh, Mickey Joshua Powell¹, and Nathan Sullivan (“Defendants”) bring this Motion for Summary Judgment seeking dismissal of all claims against them and judgment in their favor on Defendants’ counterclaim for declaratory relief.

Plaintiff United Federation of Churches, LLC (“UFC” or “Plaintiff”) is a Massachusetts LLC that holds itself out as a religious organization known as The Satanic

¹ Defendant Mickey Meehan’s legal name is Mickey Joshua Powell.

1 Temple. Defendants are former members of an autonomous local chapter of The Satanic
2 Temple, known as the Washington Chapter (“Washington Chapter”). The Washington
3 Chapter is not a party to this lawsuit. After the Chapter expelled Defendants in March of
4 2020, its leaders expressly relinquished to Defendants a Facebook Page used for posting
5 humorous “memes” (the “Memes Page”²), expressly telling Defendants that the Memes Page
6 was theirs to use “free and clear.” In reliance on this express relinquishment, Defendants used
7 the Memes Page for their own purposes.

8 In March of 2020, Defendant Johnson, who had administrative rights to another
9 Facebook Page used by the Washington Chapter (the “Chapter Page”), temporarily took
10 control of the page, essentially turning it into a shuttered “Archive” for two months, until the
11 Washington Chapter resumed actively using the page in late May of 2020. Johnson has not
12 controlled or attempted to control the Washington Chapter Page since then.

13 Based on these events, UFC, a well-funded national organization, has engaged in over
14 four years of retaliatory litigation against Defendants (who it knows are individuals of modest
15 means) because Defendants have been vocal critics of The Satanic Temple. UFC has filed six
16 complaints and ten claims (half of which are now dismissed) against Defendants, first in a
17 voluntarily dismissed federal action and now in this matter. Although UFC knows that the
18 Washington Chapter’s leaders expressly relinquished all interests in the Memes Page and told
19 Defendants it was theirs to use “free and clear,” and although UFC has no ownership interests
20 or damages for the conduct at issue, UFC continues to pursue meritless claims based on the
21 contention that Defendants “stole” the Memes Page. Similarly, despite having no damages,
22 UFC continues to assert meritless claims based on Defendant Johnson’s temporary use of the
23 Chapter Page for two months more than four years ago.

24 UFC’s claims fail as a matter of law for several reasons. First, UFC’s claims are time
25 barred. UFC’s claims are all subject to a three-year statute of limitations, with the claims

26 _____
² UFC refers to the Memes Page as the “Allies Page.”

1 accruing on either March 14, 2020 or March 20, 2020. UFC did not file its complaint in this
2 matter until April 5, 2023, outside of the limitations period. Second, UFC’s conversion,
3 trespass, and replevin claims relating to the Memes Page fail because UFC cannot establish
4 that UFC, as opposed to the autonomous, non-party Washington Chapter, had an ownership
5 interest in it. Nor can UFC show that Defendants are in wrongful possession of the Memes
6 Page because the Washington Chapter expressly relinquished any interest in the page to them.
7 Third, UFC’s breach of fiduciary duty claim fails because UFC does not allege and cannot
8 show that Defendants had a fiduciary relationship with UFC. Fourth, UFC’s tortious
9 interference claim fails because UFC has not and cannot show that UFC (versus the
10 Washington Chapter) had the alleged relationship with which UFC contends Defendants
11 interfered. Nor has UFC alleged that it suffered any actual damage. Fifth, UFC’s claims for
12 conversion and trespass based on Washington Chapter documents allegedly in Sullivan’s
13 possession fail because UFC cannot show that the alleged documents belong to UFC.

14 For these and other reasons set forth below, Defendants request that the Court dismiss
15 all claims against them. Defendants further request a judgment in their favor on Defendants’
16 counterclaim for declaratory relief that they are entitled to use the Memes Page.

17 II. FACTS

18 A. Plaintiff United Federation of Churches, LLC (The Satanic Temple) And Non- 19 Party Washington Chapter

20 Plaintiff UFC is a limited liability company based in Salem, Massachusetts. Roller
21 Decl. ¶2 & Ex. 1 (1-7). UFC holds itself out as a religious organization. Amended Complaint
22 ¶8 (Sub.³ No. 15) (“Complaint”). UFC alleges that it has adherents in all fifty states who
23 belong to autonomous local entities called “chapters.” *Id.* ¶12; Roller Decl. ¶3 & Ex. 2 (8-
24 10). The autonomous chapter involved in this case (although it is not a party) is the
25 Washington Chapter. Complaint ¶13. At the time of the events upon which this lawsuit is

26 ³ Although the Complaint is entitled “Amended Complaint,” it is the second amended
complaint. *See* Sub. Nos. 1, 7, and 15.

1 based (March to May of 2020), the Washington Chapter was a limited liability company,
2 registered with the Washington Secretary of State under the name “Infernal Washington,
3 LLC,” with Leah Garvais (“Garvais”) listed as its governor. Sullivan Decl. ¶¶4-7 & Exs 1-2.
4 At the relevant time, the Washington Chapter was led by two individuals: Garvais (who uses
5 the pseudonym Siri Sanguine), who served as its “Chapterhead,” and Paul Case (“Case”)
6 (who uses the pseudonym Tarkus Claypool), who served as its “Media Liaison.” Complaint
7 ¶13; Sullivan Decl. ¶¶3-4. The Chapterhead has administrative authority over the Washington
8 Chapter and the Media Liaison serves as “the public image of their respective Chapter, and,
9 by extension, the image of TST in that area.” Complaint ¶¶14-15; Roller Decl. ¶3 & Ex. 2 (8-
10 10).

11 The separate, autonomous nature of local chapters is demonstrated by the fact that
12 UFC’s relationship with local chapters is governed by contracts called “affiliation
13 agreements.” Although it appears that the affiliation agreements have varied over time, they
14 all recognize that UFC is a separate entity from those who affiliate with it (its “Affiliates”).
15 *See, e.g.*, Roller Decl. ¶¶4-6 & Ex. 3 (11-17). Pursuant to the affiliation agreements, UFC
16 grants Affiliates a license to use UFC’s “The Satanic Temple” trademark, tradename, and
17 logo. *Id.* ¶4 & Ex. 3 §2 (13). If the Affiliate uses UFC’s marks or logo in any content, the
18 Affiliate agrees to comply with certain standards set by UFC, including obtaining UFC’s
19 approval. *Id.* Ex. 3 §3 (13). On its side, the Affiliate grants UFC a license to use any of the
20 Affiliate’s content that contains UFC’s marks, tradename, or logo. *Id.* §2 (13). UFC has not
21 produced any executed Affiliate Agreements between the Washington Chapter (Infernal
22 Washington, LLC) and UFC. In fact, UFC has not produced any Affiliate Agreements that
23 are signed by UFC. *Id.* ¶¶4-6.

24 **B. Defendants**

25 Defendants are individuals who used to be members of the Washington Chapter (and
26 its predecessor, the Seattle Chapter). Complaint ¶16; Johnson Decl. ¶2; Powell Decl. ¶2;

1 Sullivan Decl. ¶2. While they were members, Defendants volunteered with the Seattle
2 Chapter/Washington Chapter in different roles, including serving on the Chapter’s advisory
3 council and helping with the Chapter’s social media. Johnson was a Facebook administrator
4 for the Washington Chapter’s Facebook Page (Johnson Decl. ¶21) and Powell and Johnson
5 were Facebook administrators for another Facebook Page referred to by UFC as the Allies
6 Page and referred to by the Defendants as the “Memes Page.” Johnson Decl. ¶¶3-11; Powell
7 Decl. ¶¶5-9. In March of 2020, the Washington Chapter expelled Defendants. Johnson Decl.
8 ¶¶12-15.

9 **C. The Facebook Pages**

10 **1. The Chapter Page**

11 The crux of this case involves the use of two Facebook pages. The first is a
12 Washington Chapter Facebook page (“Chapter Page”). Complaint ¶24. The original
13 Facebook page that became the Chapter Page was created in October of 2014 by an individual
14 who used the pseudonym Lilith Starr.⁴ Sullivan Decl. ¶¶2-3. The Chapter Page was created
15 to disseminate information about what was then called the Seattle Chapter. *Id.* ¶3.

16 In the fall of 2019, the Seattle Chapter decided to reorganize and rename itself—
17 changing “Seattle” Chapter to “Washington” Chapter in January of 2020. Sullivan Decl. ¶¶2,
18 6-7. During the transition, the Chapter changed the name of the Chapter Facebook page from
19 “The Satanic Temple-Seattle Chapter” to “The Satanic Temple—Washington Chapter.”
20 Complaint Ex. 1; Johnson Decl. ¶22. Around this same time, in February of 2020, the Chapter
21 became an LLC, registered as “Infernal Washington, LLC,” but known as “The Satanic
22 Temple—Washington.” Sullivan Decl. ¶¶6-7. In January of 2020, the Washington Chapter
23 gave Defendant Johnson “admin” status to the Chapter Page. Johnson Decl. ¶¶3, 21. A person
24

25 ⁴ Members of the Washington Chapter used pseudonyms for anything related to The Satanic
26 Temple. In discovery UFC has refused to provide actual names for witnesses, instead
providing only their pseudonyms.

1 with that status can control the page, including controlling who else has administrative access.
2 *Id.* ¶9.

3 **2. The Memes “Page”**

4 The second Facebook Page—the Memes Page (called the “Allies Page” by UFC)—
5 was originally created in 2018 by an informal group in the south Puget Sound area who called
6 themselves the South Sound Satanists. Johnson Decl. ¶¶3-11. The South Sound Satanists
7 created both a Facebook page and group called “South Sound Satanists: Friends of TST.” *Id.*
8 Several of the South Sound Satanists who had created the Facebook page were also members
9 of the Seattle Chapter. *Id.* In November of 2019, Garvais and Case (the two leaders of the
10 Seattle Chapter) expelled the South Sound Satanists who were managing the Facebook page
11 from the Seattle Chapter. *Id.* Before expelling the South Sound Satanists, Case obtained
12 administrative access to the South Sound Satanists’ Facebook page and group. *Id.* After the
13 expulsion, Case removed them as admins of the South Sound Satanists Facebook page and
14 group. *Id.* Case then added Garvais as an admin for that page and group.

15 On December 21, 2019, Garvais added Johnson and Powell (who used the pseudonym
16 “Lenore Calavera”) as editors of the former South Sound Satanists page. *Id.*; Powell Decl.,
17 ¶¶3-6; Johnson Decl. ¶8. The plan for the page, which was agreed to by Garvais, was not to
18 use the page as a community, but instead to turn the largely abandoned page into a “memes”
19 page, focusing on short-form humor and provocative images, using funny “memes” from
20 places like Twitter and Tumblr (*i.e.*, the “Memes Page”). Johnson Decl. ¶8; Powell Decl. ¶7.
21 The intent was for the Memes Page to have a light, comedic, and ironic tone. *Id.*

22 On January 1, 2020, Garvais gave Johnson and Powell/“Lenore Calavera”
23 administrative status for the page. *Id.* Powell Decl. ¶8; Johnson Decl. ¶9. Around that same
24 time, Garvais accidentally renamed the Memes page “TST WA Allies,” although the page’s
25 username/url was changed to be “facebook.com/queersatanicmemes” to reflect the intent to
26 change the name of the page to something relating to the “memes” url and aligning the page

1 with its intended “memes” content. Johnson Decl. ¶¶10-11. The Allies name change was
2 intended to take place only on the related South Sound Facebook *group*. *Id.* Because of the
3 mistaken temporary name change, UFC continues to mistakenly refer to the Memes Page as
4 “the Allies Page.”

5 **D. The Washington Chapter Expelled Defendants and Relinquished all Interests in**
6 **the Memes Page**

7 On March 12, 2020, to Defendants’ shock, the Washington Chapter’s Chapterhead,
8 Garvais, falsely accused the Defendants of having been involved in an alleged effort to
9 undermine the Washington Chapter’s leadership. Johnson Decl. ¶12. The email announced
10 that Garvais had decided to dissolve the advisory council upon which Defendants served as
11 volunteers and to replace it with a smaller, handpicked group. *Id.* Two days later, on March
12 14, 2020 at 5:31pm, Garvais (using the pseudonym Siri Sanguine) berated Defendant
13 Powell/“Lenore Calavera” for the volunteer social media work that he provided the
14 Washington Chapter and was critical of the content he was posting on the Memes Page.
15 Powell Decl. ¶10-11; Johnson Decl. ¶13. Powell, an admin on the page, removed the other
16 Washington Chapter editors and admins, including Garvais and Case (aka “Tarkus
17 Claypool”). *Id.* Johnson then changed the name of the page from the temporary mistaken
18 name “TST WA Allies” to “Evergreen Memes for Queer Satanic Fiends” to align with its
19 intended purpose as a memes page and with its URL. *Id.* At this same time, Powell detached
20 the TST WA Allies group from the Memes Page and did not change the administrative access
21 to the group. Powell Decl. ¶10.

22 At 7:58pm on March 14, 2020, Garvais first responded by alleging that Powell had
23 “stolen” the Memes Page. Johnson Decl. ¶14 & Ex. 1. However, later that night, at 9:09pm,
24 in response to the name change and to Powell’s subsequent statement on the Memes Page
25 that it was no longer affiliated with the Washington Chapter, the Washington Chapter
26 leadership relinquished all interests in the Memes Page and expressly gave it to Powell and
Johnson to use “free and clear.” Specifically, the Washington Chapter’s Media Liaison,

1 Case/“Tarkus Claypool,” sent Powell/“Lenore Calavera” an email with the subject line
2 expressly addressing the new name of the page—“Evergreen Memes for Queer Satanic
3 Fiends.” In the email, Case/“Tarkus Claypool” acknowledged the changes to the Memes Page
4 and told Powell/“Lenore Calavera” that the Washington Chapter had no interest in reclaiming
5 it and that Powell and Johnson could have and use the page “free and clear:”

6 Hi Lenore,

7 I saw that you made some changes to the TST WA State Allies FB group. **I**
8 **just wanted to let you know that it’s yours free and clear and we’ve no**
9 **desire to claim it.** You and ADJ [Defendant Johnson] built it and have done
10 a great job doing so. I’m confident you’ll both continue doing awesome
11 work.

12 Sorry the way things panned out, and I do mean all of it. I wish you and
13 your family well, and respect your need to fight the fight your way.
14 Rock on,

15 Tarkus Claypool
16 Media Liaison, The Satanic Temple of Washington
17 (he/him)

18 Powell Decl. ¶14 & Ex. 1 (emphasis added).

19 The next day, in a March 15, 2020 Washington Chapter online town hall meeting via
20 Zoom that was hosted by Garvais/“Siri Sanguine” and Case/“Tarkus Claypool,”
21 Case/“Tarkus Claypool” again publicly and expressly reiterated in front of his co-host
22 Garvais/“Siri Sanguine” and Washington Chapter members that the Washington Chapter had
23 relinquished all interests in the Memes Page. Specifically, Case/“Tarkus Claypool” stated:

24 I do want to say that **we’re not going to, you know, ask Lenore to give**
25 **the page back in any way. I wish them well, and I hope that they**
26 **continue growing that and make it a great success.** Because they’re going
to fight their fight, their way. And so, let them do what they want to, and I
wish them well, because both Lenore and ADJ [Johnson] did a wonderful
job in the roles that they had. It just wasn’t within the TST guidelines that
we are beholden to. So I want to give them due credit, and just you know,
wish them well with what they’re going to plan to do with it in the
future.

1 Johnson Decl. ¶16 & Ex. 3 (emphasis added). Garvais, who was running the town hall, agreed
2 with Case in relinquishing interest in the page and even complimented the work on the page.
3 *Id.* ¶17 & Ex. 3. In reliance on this express relinquishment, Defendants continued to use the
4 page. *Id.* ¶¶18-20.⁵

5 Following the Washington Chapter’s express relinquishment, in a social media
6 message to another individual, Sullivan, who had been on leave from the Washington
7 Chapter, made a tongue-in-cheek comment that Defendants had “stolen” the Memes Page.
8 Complaint ¶38. However, the comment was intended as a sarcastic joke because the
9 Washington Chapter had already expressly given the Memes Page to Powell and Johnson.
10 Sullivan Decl. ¶¶14-15. At no point since expressly giving the Memes Page to Powell and
11 Johnson have Case, Garvais, or anyone else from the Washington Chapter retracted the
12 unequivocal statements waiving any claim to or interest in the Memes Page and telling
13 Defendants that they could use it “free and clear.” Johnson Decl. ¶¶18-19; Powell Decl. ¶17.
14 At no point before UFC filed its original complaint in federal court did UFC assert ownership
15 of the Memes Page or ask Defendants for access to it. Johnson Decl. ¶19.

16 UFC has not shown that UFC (versus the autonomous Washington Chapter) had any
17 relationship with Facebook regarding the Memes Page prior to the Washington Chapter
18 giving the Page to Powell and Johnson. *See, e.g.*, Complaint ¶26 (alleging that the
19 Washington Chapter created the “Allies” Page); ¶59 (alleging that Defendants “acted to sever
20 the Washington Chapter’s relationship with Facebook”). Nor has UFC shown that UFC
21 (versus the non-party Washington Chapter) has suffered any damages due to the Defendants’
22 use of the Memes Page. Roller Decl. ¶8 & Ex. 5 (20-24).

23
24
25 ⁵ Powell only remained an admin for the Memes Page until July of 2020 when he was
26 removed as an admin. Since July of 2020, Powell has not had any control over or posted to
the Memes Page and has otherwise not been involved with the Memes Page. Powell Decl.
¶¶16-18.

1 **E. Johnson Posted Critical Content on the TST Chapter Facebook Page**

2 On March 20, 2020, Johnson, who was an admin of the Washington Chapter Page,
3 posted critical opinions regarding The Satanic Temple. Complaint ¶41. On March 22, 2020,
4 Johnson removed other admins and changed the name of the page from “The Satanic Temple
5 Washington” to “Satanic Washington State—Archived Temple Chapter” and changed the
6 page’s status to “permanently closed.” *Id.* ¶¶40, 45. The page then became dormant for two
7 months. Johnson Decl. ¶24. On or around May 27, 2020, the Washington Chapter removed
8 Johnson as the admin of the Chapter Facebook Page, renamed it “The Satanic Temple—
9 Washington State Chapter” and resumed using the page. *Id.* ¶25. Since May 27, 2020, neither
10 Johnson nor any of the Defendants have had or have attempted to have admin access to the
11 Chapter Facebook Page. *Id.*

12 UFC has not alleged that UFC (as opposed to the Washington Chapter) had a
13 relationship with Facebook regarding the Chapter Page. *See, e.g.*, Complaint ¶23 (“At the
14 relevant time, Facebook was the Washington Chapter’s primary platform of communicating
15 with its membership.”); ¶59 (alleging Defendants acted “to sever the Washington Chapter’s
16 relationships with Facebook.”). Nor has UFC alleged that UFC (versus the Washington
17 Chapter) has suffered any damages due to Johnson’s use of the Chapter Page. *See* Complaint,
18 ¶47 (alleging that the Washington Chapter lost members); Roller Decl. ¶8 & Ex. 5 (20-24).

19 **F. Sullivan and the Alleged Documents**

20 UFC alleges that after he was expelled by the Washington Chapter, Sullivan (who
21 was on leave at the time of his expulsion) retained Washington Chapter membership-related
22 documents that he obtained while volunteering with the Washington Chapter. Complaint
23 ¶¶28-29. UFC asserts claims for conversion and trespass as to the alleged documents. *Id.*
24 ¶¶70-71, 78. Sullivan, through his counsel, has repeatedly informed UFC that the only
25 documents in his possession are a small scattering of miscellaneous, outdated, random, and
26 valueless documents that are simply the natural residue left over from his six years of

1 volunteering with the Seattle/Washington Chapter. Sullivan Decl. ¶¶16-23. UFC has
2 provided no evidence indicating otherwise. Roller Decl. ¶9 & Ex. 6 (25-193). In any event,
3 UFC has never alleged or shown that the alleged documents belonged to UFC versus the
4 Washington Chapter. Sullivan Decl. ¶18.

5 **G. Procedural History: Four Years of Retaliatory Litigation**

6 Based on the above events, UFC has engaged in four years of expensive litigation
7 against Defendants (the true purpose of which has been to harass and punish Defendants for
8 expressing their critical opinions about The Satanic Temple). Despite knowing that the
9 Washington Chapter expressly gave the Memes Page to Defendants to use “free and clear,”
10 and despite that UFC has suffered no damages, UFC (not the Washington Chapter) has
11 asserted myriad baseless claims against Defendants over the last four years, first in federal
12 court and then here. UFC’s claims in federal court included:

- 13 • Violation of the Computer Fraud and Abuse Act;
- 14 • Cyberpiracy under the Lanham Act;
- 15 • Violation of the Consumer Protection Act;
- 16 • Trademark Dilution;
- 17 • Defamation;
- 18 • Tortious Interference with a Business Expectancy;
- 19 • Trespass to Chattels; and
- 20 • Conversion

21 Roller Decl. ¶10 & Ex. 6 (25-193).

22 After all the federal claims and the defamation claim were dismissed with prejudice,
23 on January 6, 2023, the district court dismissed the remaining state law claims without
24 prejudice for lack of jurisdiction. *Id.* ¶11 & Ex. 7 (194-99). Three months later, on April 5,
25 2023, UFC filed a complaint in this Court, alleging the exact same facts and again asserting
26 the same state law claims for tortious interference, trespass to chattels, and conversion, also

1 adding in a new claim for breach of fiduciary duty. Sub. No. 1. UFC subsequently filed an
2 amended complaint on May 30, 2023 (Sub. No. 7) and the operative Complaint on February
3 22, 2024 (Sub. No. 15).

4 UFC appealed the federal district court’s dismissal of its federal cyberpiracy claim
5 and state law defamation claim. Because of the overlap with the pending federal appeal, this
6 Court granted the parties’ stipulated motion to stay pending resolution of the federal matter.
7 Sub. No. 10.

8 On appeal, UFC argued, among other things, that diversity jurisdiction should apply
9 to the case and asked the Ninth Circuit Court of Appeals to remand to determine that issue.
10 In vacating dismissal of the defamation claim, the Ninth Circuit agreed that it was appropriate
11 to remand the case to the district court for a determination of whether diversity jurisdiction
12 existed. Roller Decl. ¶12 & Ex. 8 (200-04). Upon remand, the district court ordered the parties
13 to submit a proposed schedule for jurisdictional discovery. *Id.* ¶13 & Ex. 9 (205-06).
14 However, before engaging in jurisdictional discovery, UFC voluntarily dismissed the federal
15 action. *Id.* ¶¶14-15 & Exs. 10-11 (207-11). Following UFC’s voluntary dismissal of the
16 federal action, this Court lifted the stay in this matter. Sub. No. 13.

17 The operative Complaint re-asserts three of the same claims from the federal matter:
18 (1) tortious interference with business expectancy relating to the Chapter Page and Memes
19 Page; (2) trespass to chattels (as to the Memes Page and alleged documents in Sullivan’s
20 possession); and (3) conversion (as to the Memes Page and documents). The Complaint also
21 adds two new state law claims for breach of fiduciary duties and replevin. Complaint at 10-
22 14.

23 In total, in both actions UFC has brought **six** different complaints and asserted **ten**
24 meritless claims against Defendants. ⁶ Because UFC’s claims fail as a matter of law,

25 ⁶ UFC’s true purpose in this litigation is retaliation against Defendants for being openly
26 critical of The Satanic Temple. UFC’s attorney has publicly expressed the goal that the
attorneys’ fees in this case “squeeze[] every last penny from you living corpses” [referring to

1 Defendants bring this Motion for Summary Judgment seeking to put an end to this retaliatory
2 litigation. Defendants also seek a ruling on their counterclaim for declaratory judgment that
3 they have the right to use the Memes Page.

4 III. EVIDENCE RELIED UPON

5 Defendants' Motion for Summary Judgment relies on the Declarations of David
6 Johnson, Nathan Sullivan, Mickey Powell, and Jeremy Roller and the pleadings and files on
7 record in this matter.

8 IV. ISSUES

- 9 A. Should UFC's claims be dismissed because they are barred by the statute of
10 limitations?
- 11 B. Should UFC's claims for conversion, trespass to chattels, and replevin be
12 dismissed because UFC cannot establish the element that UFC is entitled to
13 possession of the property at issue?
- 14 C. Alternatively, should UFC be estopped from asserting claims for conversion,
15 trespass, and replevin as to the Memes Page?
- 16 D. Should UFC's claim for breach of fiduciary duty be dismissed because UFC
17 cannot establish that UFC had a fiduciary relationship with Defendants?
- 18 E. Should UFC's claims for tortious interference with a business expectancy be
19 dismissed because UFC cannot establish the element that UFC had the alleged
20 business relationship?
- 21 F. Should UFC's tortious interference claim be dismissed because it cannot show
22 that UFC experienced actual damages from the alleged interference?

23 Defendants]. Johnson Decl. ¶¶26-27 & Ex. 4. UFC's attorney has also expressed his own
24 personal animosity towards the Defendants, stating in a public Tweet:

25 Are these fuckwits still talking about me? Grow up and file an answer so I can
26 get at your financial records. I'm coming for you. Tell the judge on me again,
I double dare you.

Id. ¶28 & Ex 5.

1 G. Should Defendants’ counterclaim for declaratory relief entitling them to use the
2 Memes Page be granted where there are no material issues of fact that the
3 Washington Chapter expressly gave the Memes Page to Defendants to use “free
4 and clear?”

5 V. ARGUMENT

6 A. Summary Judgment Standard

7 Summary judgment is appropriate if there is no genuine issue of material fact and the
8 moving party is entitled to judgment as a matter of law. CR 56(c); *Trimble v. Wash. State*
9 *Univ.*, 140 Wn.2d 88, 93 (2000); *Clements v. Travelers Indem. Co.*, 121 Wn.2d 243, 249
10 (1993). “In opposing summary judgment, a party may not rely merely upon allegations or
11 self-serving statements, but must set forth specific facts showing that genuine issues of
12 material fact exist.” *Newton Ins. Agency & Brokerage, Inc. v. Caledonian Ins. Group, Inc.*,
13 114 Wn. App. 151, 158 (2002). Conclusory statements of fact are insufficient to defeat a
14 summary judgment motion. *Hamblin v. Castillo Garcia*, 23 Wn. App. 2d 814, 831 (2022). A
15 court may award judgment “if the pleadings, depositions, answers to interrogatories, and
16 admissions on file, together with the affidavits, if any, show that there is no genuine issue as
17 to any material fact.” CR 56(c).

18 Summary judgment dismissing UFC’s claims is appropriate both because UFC’s
19 claims are time barred and because UFC is unable to establish elements of its claims.
20 Summary judgment granting Defendants’ counterclaim for declaratory relief is also
21 appropriate because there are no material issues of fact that UFC has no grounds for
22 interfering with Defendants’ use of the Memes Page.

23 B. UFC’s Claims Are Barred by the Statute of Limitations

24 1. UFC’s April 5, 2023 Complaint was Filed Outside the Limitations Period

25 All five of UFC’s claims are subject to a three-year statute of limitations. *See, e.g.*,
26 *City of Seattle v. Blume*, 134 Wn. 2d 243, 251 (1997) (tortious interference); *Crisman v.*

1 *Crisman*, 85 Wn. App. 15, 19 (1997), *as amended on denial of reconsideration* (Feb. 14,
2 1997) (conversion); *Ferguson v. F/V The Porn Star*, No. 23-CV-1338, 2024 WL 2801996, at
3 *4 (W.D. Wash. May 31, 2024) (trespass to chattels); *Hudson v. Condon*, 101 Wn. App. 866,
4 872-73 (2000) (breach of fiduciary duty); *Azpitarte v. Sauve*, 188 Wn. App. 1016 (2015)
5 (unpublished) (replevin); RCW 4.16.080(2) (applies to an action for “taking, detaining, or
6 injuring personal property, including an action for the specific recovery thereof”).

7 A cause of action is deemed to have accrued when the plaintiff first became aware of
8 its essential elements. *Mayer v. Huesner*, 126 Wn. App. 114, 123 (2005). “A plaintiff who
9 has notice of facts sufficient to cause injury is deemed to have notice of all acts which
10 reasonable inquiry would disclose.” *August v. U.S. Bancorp*, 146 Wn. App. 328, 342 (2008);
11 *see also American Sur. Co. of N.Y. v. Sundberg*, 58 Wn.2d 337, 344 (1961) (“notice sufficient
12 to excite attention and put a person on guard, or to call for an inquiry is notice of everything
13 to which such inquiry might lead”). For example, the statute of limitations for a replevin
14 claim accrues when a plaintiff first could have asked for the return of the property in question.
15 *See Edison Oyster Co. v. Pioneer Oyster Co.*, 22 Wn. 2d 616, 627 (1945) (replevin claim for
16 oyster bed that drifted onto neighboring property accrued when it first drifted over the
17 property line, when the plaintiff could have asked for it back). The statute of limitations for
18 replevin is not tolled due to the plaintiff’s delay in asking for the return of the property or the
19 defendant’s ongoing possession. *Id.* at 625-27.

20 UFC’s claims are based on allegations that Defendants “stole” the Memes Page on
21 March 14, 2020, that Johnson interfered with the Chapter Page on March 20, 2020, by
22 changing the admins on the page, or that Sullivan retained documents in his possession at the
23 time he was expelled in March of 2020. According to UFC’s own Complaint, it was fully
24 aware of the alleged conduct at the time the conduct occurred. Thus, all the claims accrued
25 on either March 14, 2020 (relating to the Memes Page) or on March 20, 2020 (relating to the
26

1 Chapter Page) or, for Sullivan’s alleged documents, around March 14, 2020, when the
2 members were expelled.

3 Because the claims accrued on either March 14 or 20, 2020, the three-year statutes of
4 limitations for these claims expired on March 14 or 20, 2023. UFC did not file its Complaint
5 in this Court until April 5, 2023, after the limitations periods had run.

6 Although UFC’s claims may have been contingently tolled during the pendency of
7 the federal action, when UFC voluntarily dismissed that case, the effect was to nullify the
8 tolling as though the federal action had not been filed. *See, e.g., Townsley v. Lifewise*
9 *Assurance Co.*, No. C15-1228-JCC, 2016 WL 1393548, at *3 (W.D. Wash., Apr. 8, 2016)
10 (“The statute of limitations was not tolled by Plaintiff’s filing her first complaint as it was
11 dismissed without prejudice.”) (citing *Ciralsky v. C.I.A.*, 355 F.3d 661, 672 (D.C. Cir. 2004)
12 (“[O]nce a suit is dismissed, even if without prejudice, ‘the tolling effect of the filing of the
13 suit is wiped out and the statute of limitations is deemed to have continued running from
14 whenever the cause of action accrued, without interruption by that filing.’”)); *Elmore v.*
15 *Henderson*, 227 F.3d 1009, 1011 (7th Cir. 2000) (“The filing of a suit stops the running of
16 the statute of limitations, though only contingently. . . . [I]f the suit is dismissed without
17 prejudice, meaning that it can be refiled, then the tolling effect of the filing of the suit is wiped
18 out and the statute of limitations is deemed to have continued running from whenever the
19 cause of action accrued, without interruption by that filing. . . . In other words, a suit dismissed
20 without prejudice is treated for statute of limitations purposes as if it had never been filed.”);
21 *Steinberg v. Seattle-First Nat. Bank*, 66 Wn. App. 402, 406, (1992) (“[w]here an original
22 action is dismissed, a statute of limitations is deemed to continue to run as though the action
23 had never been brought.”) (quoting *Logan v. N.-W. Ins. Co.*, 45 Wn. App. 95, 99 (1986)).

24 While this dispute was pending in federal court, with the parties poised to engage in
25 jurisdictional discovery, UFC voluntarily dismissed the case. Roller Decl. ¶¶14-15 & Exs.
26 11-12 (207-11). Upon voluntarily dismissing the federal case, the statute of limitations that

1 had been contingently tolled during the pendency of the federal case ran as if the case had
2 never been filed. *Holt v. Cnty. of Orange*, 91 F.4th 1013, 1020 (9th Cir. 2024) (“[A] voluntary
3 dismissal ‘leaves the situation the same as if the suit had never been brought in the first
4 place.’”). To be timely, UFC needed to have filed its complaint here within three years of the
5 accrual of its claims, *i.e.*, by March 14 or 20, 2023. It filed its complaint on April 5, 2023,
6 outside the limitations period.

7 To the extent UFC asserts that the federal tolling statute, 28 U.S.C. § 1367(d), applies,
8 the Ninth Circuit held in *Holt v. County of Orange* that the tolling statute does not apply when
9 a plaintiff voluntarily dismisses a case, as happened here. Instead, upon a voluntary dismissal,
10 the long-established rule that the tolling of the statute of limitations is erased applies:

11 Under Holt’s argument, tolling would be required for any action that
12 includes both federal and supplemental claims when the plaintiff voluntarily
13 dismisses the action. We are unwilling to conclude that § 1367(d) abrogated
14 such an entrenched legal rule absent a clear indication that Congress meant
15 to do so.

14 *Id.*

15 UFC’s claims are time barred.

16 Even if the well-established rule that the dismissal of an action erases the tolling of
17 the statute of limitations did not exist (although it clearly does), UFC’s claims for replevin
18 and breach of fiduciary duty would still be time-barred. UFC asserted the claims for the first
19 time on April 5, 2023⁷, outside the limitations period. Thus, these two claims are time barred.

20 **2. UFC’s Claim Accrual was not Extended by Alleged Additional Harm**

21 When Defendants notified UFC that its claims were time-barred, UFC took the
22 incorrect position that, at least for its fiduciary duty claim, the statute of limitations did not
23 begin to run until Defendants profited from the allegedly misappropriated Allies Page, which
24 UFC alleges did not occur until April 20, 2020. This argument is meritless. “The statute of
25

26 ⁷ The claim for replevin was added in the second amended complaint on February 22, 2024.
Sub. No. 15.

1 limitations is not postponed by the fact that further, more serious harm may flow from the
2 wrongful conduct.” *Green v. A.P.C.*, 136 Wn.2d 87, 96 (1998); *Hudson v. Condon*, 101 Wn.
3 App. 866, 875 (2000) (“The running of the statute is not postponed by the fact that the
4 substantial damages occur later, and is not postponed until the specific damages occur for
5 which the plaintiff seeks recovery.”). “[T]o hold otherwise would run contrary to important
6 policy considerations such as Washington’s strong preference for avoiding the splitting of
7 causes of action.” *Green*, 136 Wn.2d at 96. UFC’s breach of fiduciary duty claim is based on
8 the premise that Defendants breached a fiduciary duty to UFC by wrongfully taking and using
9 its property (the Memes Page). According to UFC’s own Complaint, this wrongful conduct
10 first occurred on March 14, 2020. UFC’s (incorrect) assertion that it is entitled to additional
11 disgorgement damages flowing from later use of the Memes Page does not change that the
12 claim accrued when the alleged breach first occurred—March 14, 2020—regardless of when
13 alleged additional harm occurred. *Green*, 136 Wn.2d at 96. UFC’s claims are time-barred.

14 **C. UFC Cannot Establish the Required Elements of Ownership or Interest for All**
15 **of its Claims**

16 In addition to being time-barred, each of UFC’s five claims (conversion, trespass,
17 replevin, tortious interference, and breach of fiduciary duty) also fail as a matter of law
18 because UFC cannot establish rights to the property or that it was the party with the
19 relationship at issue.

20 Three of UFC’s claims (conversion, trespass, and replevin) require the prima facie
21 element of right to possession to the property at issue. *See, e.g., Washington State Bank v.*
22 *Medalia Healthcare L.L.C.*, 96 Wn. App. 547, 554 (1999) (element of conversion includes
23 the plaintiff’s right to possession of the property); *Lavington v. Hillier*, 22 Wn. App. 2d 134,
24 148, *review denied*, 200 Wn.2d 1010 (2022) (claims for trespass include the element that
25 plaintiff is dispossessed of property to which it is entitled to exclusive possession); *SEIU*
26 *Healthcare Nw. Training P’ship v. Evergreen Freedom Found.*, 5 Wn. App. 2d 496, 500

1 (2018) (replevin requires that plaintiff has ownership rights and right to the possession of the
2 property).

3 Similarly, tortious interference requires the plaintiff to establish that it had the
4 relationship that was allegedly interfered with—here, the relationship with Facebook vis-à-
5 vis the Memes Page and Chapter Page. *Woods View II, LLC v. Kitsap Cty.*, 188 Wn. App. 1,
6 29-30 (2015) (tortious interference requires the plaintiff to show that it had a relationship
7 with a third party). Breach of fiduciary duty also requires the plaintiff to establish that it held
8 the fiduciary relationship at issue. *See, e.g., Micro Enhancement Int'l, Inc. v. Coopers &*
9 *Lybrand, LLP*, 110 Wn. App. 412, 433-34, (2002) (elements of a fiduciary duty claim include
10 establishing fiduciary relationship and the resulting duty owed by the defendant to the
11 plaintiff). UFC cannot prove these elements.

12 **1. The Relationship with Which Defendants Allegedly Interfered was Between**
13 **Non-Party Washington Chapter and Facebook**

14 For its tortious interference claim, UFC asserts that Defendants interfered with the
15 *Washington Chapter's* relationship with Facebook through the alleged misappropriation of
16 the Washington Chapter's Facebook Pages. Complaint ¶59 (“Defendants intentionally and
17 with an improper motive acted to sever the Washington Chapter’s relationships with
18 Facebook by misappropriating the two websites”); ¶23 (“At the relevant time, Facebook
19 was the Washington Chapter’s primary platform of communicating with its membership.”).
20 Thus, the relationship at issue is *the Washington Chapter's* alleged relationship with
21 Facebook vis-à-vis the Chapter Page and Memes Page—not UFC’s relationship with
22 Facebook. Although UFC may claim to have an indirect interest in the autonomous
23 Washington Chapter or to protecting the Chapter’s relationship with Facebook, much like a
24 corporate parent does not have standing to sue for the interference of its subsidiary’s
25 relationships with third parties, UFC does not have standing to sue for an alleged interference
26 with the Washington Chapter’s relationship with Facebook. *See, e.g., Elandia Int'l, Inc. v.*
Koy, No. 09-20588-CIV, 2010 WL 2179770, at *8 (S.D. Fla. Feb. 22, 2010), *report and*

1 *recommendation adopted sub nom. Elandia Int'l, Inc. v. Ah Koy*, No. 09-20588-CIV-
2 MORENO, 2010 WL 2196040 (S.D. Fla. June 1, 2010) (parent company had no standing to
3 sue for tortious interference based on the defendants' conduct in interfering with a
4 relationship between the parent's subsidiary and a third party); *Diesel Systems Ltd v. Yip*
5 *Shing Diesel Engineering Company Ltd.*, 861 F. Supp. 179, 181 (E.D. N.Y. 1994) (where
6 plaintiff's sister corporation was party to subject contract, plaintiff lacked standing to bring
7 tortious interference claim; "[a] corporation does not have standing to assert claims belonging
8 to a related corporation simply because their business is intertwined."); *Tullett Prebon, PLC*
9 *v. BGC Partners, Inc.*, No. CIV.A.09-5365 (SRC), 2010 WL 2545178, at *6 (D.N.J. June 18,
10 2010), *aff'd*, 427 F. App'x 236 (3d Cir. 2011) (parent company lacked standing to sue for
11 tortious interference with its subsidiary's rights). Accordingly, UFC's claims for tortious
12 interference based on the non-party Washington Chapter's relationship with Facebook fail as
13 a matter of law.

14 **2. The Alleged Fiduciary Relationship was Between Defendants and Non-Party**
15 **Washington Chapter**

16 UFC's claim for breach of fiduciary duty fails for similar reasons. The relationship
17 UFC alleges as the apparent source of its claim for breach of fiduciary duty is Defendants'
18 former relationship with the autonomous, non-party Washington Chapter. Specifically, UFC
19 alleges that Defendants were former members of the Washington Chapter and served as
20 volunteers on the Chapter's advisory council. *See, e.g.*, Complaint ¶¶16, 34. UFC does not
21 allege any fiduciary relationship between Defendants and UFC. Absent the required fiduciary
22 relationship, the claim fails.

23 **3. The Conversion, Trespass, and Replevin Claims Relating to the Memes Page**
24 **and Alleged Documents Fail Because UFC Cannot Show that It Owns the**
25 **Memes Page or Documents**

26 UFC's conversion, trespass, and replevin claims relating to the Memes Page and to
the documents allegedly held by Sullivan also fail because UFC cannot establish that it has
an ownership interest in the Memes Page or documents.

1 First, as to the Memes Page, UFC has not produced any evidence that UFC, as
2 opposed to the Washington Chapter, ever had any ownership interest in the Memes Page.
3 While UFC has produced affiliation agreements (none of which have been signed by UFC
4 (Roller Decl. ¶5)) that arguably reflect a contractual agreement in which individuals known
5 as “Affiliates” agree to provide UFC with administrative participation in the Affiliate’s social
6 media accounts, those affiliation agreements do not give UFC ownership rights—only a
7 contractual right as between UFC and the Affiliate as to administrative access to the affiliate’s
8 social media accounts.⁸

9 Second, UFC has not produced any affiliation agreement with the Washington
10 Chapter entity that existed at the time of the events. From March to May of 2020, the
11 Washington Chapter was an LLC called Infernal Washington LLC. Sullivan Decl. ¶4 & Ex.
12 1 UFC has produced no affiliation agreement with Infernal Washington LLC (Roller Decl.
13 ¶6) or any other evidence relating to UFC’s alleged ownership of the Facebook Pages used
14 by Infernal Washington LLC. Thus, even assuming, *arguendo*, that the affiliate agreements
15 affected ownership (which they do not), no such agreement exists for the Washington
16 Chapter.

17 Third, the Washington Chapter expressly relinquished any interest in the Memes
18 Page. The Washington Chapter’s leaders expressly gave the Memes Page to Defendants on
19 March 14 and 15, 2020 to use “free and clear” and stated that the Washington Chapter had
20 no interest in seeking the return of the page—even wishing the Defendants well in their use
21 of the page. Powell Decl. ¶14, Ex. 1; Johnson Decl. ¶¶16, 3. UFC does not contest these facts,
22 but instead points to a joking statement made by Sullivan in a Facebook comment to another
23 Facebook user in which Sullivan glibly says, “we have a meme page here that we stole from
24 TST.” Complaint Ex. 2. However, as Sullivan has explained, this comment was tongue-in-

25 ⁸ The Affiliation Agreements likely are not enforceable given that some of them are signed
26 by individuals who only use a pseudonym and given that UFC does not appear to have signed
any of the agreements.

1 cheek and was made *after* the Washington Chapter had already relinquished any interest in
2 the Memes Page to Defendants, when Defendants understood that they were free to use the
3 Memes Page “free and clear.” Sullivan Decl. ¶14. The glib comment does not create any
4 material issues of fact negating the Washington Chapter’s express relinquishment of any
5 interest in the page. Because UFC did not have any ownership interest in the Memes Page,
6 and, to the extent it did, the ownership interest was relinquished by the Washington Chapter,
7 the conversion, trespass, and replevin claims as to the Memes Page fail as a matter of law.

8 Finally, as to the documents allegedly in Sullivan’s possession, UFC has not and
9 cannot establish that the alleged documents belonged to UFC. Instead, UFC alleges that the
10 documents at issue belonged to the non-party Washington Chapter, not UFC. *See, e.g.*,
11 Complaint ¶46 (alleging that Sullivan possesses the Washington Chapter’s membership
12 documents); Sullivan Decl. ¶¶17-18 (Sullivan possesses no documents that belong to UFC).
13 Thus, the conversion and trespass claims as to the alleged documents fail as well.

14 **4. UFC’s Arguments Relating to the Washington Chapter’s Relinquishment**
15 **Fail**

16 **a. Affiliation Agreements do not Help UFC**

17 Facing indisputable evidence that the Washington Chapter relinquished all interests
18 in the Memes Page, UFC nonetheless asserts that the Washington Chapter’s Media Liaison
19 and Chapterhead did not have the authority to do so. This argument holds no water. First, to
20 the extent UFC’s argument stems from UFC’s affiliation agreements with various
21 individuals, UFC did not have any affiliation agreement with the Washington Chapter entity
22 that existed at the relevant time (March of 2020)—Infernal Washington, LLC. While UFC
23 has produced various affiliation agreements with individuals, such as Garvais and Case, those
24 affiliation agreements are signed by only the individuals and not in a representative capacity
25 for Infernal Washington, LLC. Roller Decl. ¶¶ 4-6 & Ex. 3 (11-17). Thus, individuals’
26 affiliation agreements do not address the rights of the Washington Chapter (which was the

1 entity registered as Infernal Washington, LLC) to give away its interests in social media
2 accounts it was using.

3 Second, had UFC entered an affiliation agreement with the Washington Chapter entity
4 (which it had not), the affiliation agreements do not limit the affiliate’s ability to relinquish
5 its rights to a social media page. While the affiliation agreements may give UFC a contractual
6 right to participate in the administrative control for an affiliate’s social media pages, the
7 affiliation agreements do not address ownership of the social media pages—only the right to
8 participate in the administration of the pages. To the extent that UFC feels that an affiliate
9 breached an affiliation agreement by giving away a Facebook page, its remedy would be a
10 breach of contract claim against the affiliate, not a claim for conversion against the third party
11 to whom the affiliate gave the page.

12 **b. The Washington Chapter and Its Leadership Had Apparent Authority to**
13 **Relinquish Rights in the Facebook Page**

14 Even assuming, *arguendo*, that UFC’s affiliation agreements somehow negated the
15 Washington Chapter’s ability to give away the Memes Page (which they didn’t), the
16 Chapter’s relinquishment would still be valid under the doctrine of apparent authority.

17 A “principal is bound by the act of his agent when he has placed the agent in such
18 position that persons of ordinary prudence, reasonably conversant with business usages and
19 customs, are thereby led to believe and assume that the agent is possessed of certain authority
20 and to deal with him in reliance upon such assumption.” *Hoglund v. Meeks*, 139 Wn. App.
21 854, 867 (2007) (quoting *Mohr v. Sun Life Assur. Co.*, 198 Wn. 602, 603-04 (1939)).
22 “Authority to perform particular services for a principal carries with it the implied authority
23 to perform the usual and necessary acts essential to carry out the authorized services.” *Walker*
24 *v. Pacific Mobile Homes, Inc.*, 68 Wn.2d 347, 351 (1966). “Likewise, as in the case of [actual]
25 authority, apparent authority can be created by appointing a person to a position, such as that
26 of manager or treasurer, which carries with it generally recognized duties; to those who know
of the appointment there is apparent authority to do the things ordinarily entrusted to one

1 occupying such a position, regardless of unknown limitations which are imposed upon the
2 particular agent.” *King v. Riveland*, 125 Wn.2d 500, 507-08 (1994) (quoting Restatement
3 (Second) of Agency § 27 cmt. a, at 104 (1958)).

4 The Washington Chapter expressly relinquished its interests in the Memes Page
5 through the conduct of its two top leaders—its Chapterhead and Media Liaison. UFC does
6 not dispute that these are the two top leadership positions for the autonomous Washington
7 Chapter. Complaint ¶¶13-14 (Chapterhead has admin authority). Instead, UFC appears to
8 argue that the Washington Chapter did not have the authority to give away its social media
9 page. But it is undisputed that UFC publicly held out the Washington Chapter as
10 autonomous—even stating so in its Complaint (Complaint ¶ 12) and in its Chapter Handbook
11 (Roller Decl. ¶3 & Ex. 2 (8-10)). Any reasonable person dealing with the autonomous
12 Washington Chapter would assume that, as an autonomous chapter, it had authority to make
13 decisions on its behalf, including giving up rights to a social media page it used. Indeed, each
14 of the Defendants reasonably believed that the Washington Chapter and its Chapterhead and
15 Media Liaison had this authority and relied on it when they were expressly given the right to
16 use the Memes Page. Powell Decl. ¶¶4, 16; Johnson Decl. ¶¶4, 20; Sullivan Decl. ¶¶4-5, 14.
17 They relied on that apparent authority to trust that they had been expressly given the right to
18 use the Memes Page. *Id.* Given the apparent authority that UFC gave to its autonomous
19 Washington Chapter, UFC is bound by the actions taken by the Chapter.

20 **c. Equitable Estoppel Requires Dismissal of TST’s Claims Relating to the**
21 **Allies Page**

22 Alternatively, equitable estoppel prevents UFC from asserting claims relating to the
23 Memes Page. The elements of equitable estoppel are: (1) a party’s admission, statement or
24 act inconsistent with its later claim; (2) action by another party in reliance on the first party’s
25 act, statement or admission; and (3) injury that would result to the relying party from allowing
26 the first party to contradict or repudiate the prior act, statement, or admission. *Kramarevcky*
v. Dep’t of Soc. & Health Servs., 122 Wn.2d 738, 743 (1993). Equitable estoppel is based on

1 the principle that “a party should be held to a representation made or position assumed where
2 inequitable consequences would otherwise result to another party who has justifiably and in
3 good faith relied thereon.” *Id.* (quoting *Wilson v. Westinghouse Elec. Corp.*, 85 Wn.2d 78,
4 81, 530 P.2d 298 (1975)).

5 UFC’s autonomous Chapter made clear, unequivocal statements that it had
6 relinquished all interest in the Memes Page and Defendants were “free and clear” to use the
7 page for their own purposes. The statements were not only made to Defendant Powell directly
8 in an email, but also in front of the Washington Chapter’s members, with the clear approval
9 of the Washington Chapter’s Chapterhead. Any reasonable person in Defendants’ position
10 would reasonably rely on such clear, unequivocal statements that they were “free and clear”
11 to use the Memes Page for their own purposes. Defendants did indeed rely on the statements
12 to use the page as their own. Powell Decl. ¶16; Johnson Decl. ¶20. Defendants would be
13 greatly harmed if UFC were allowed to now hold Defendants liable for doing exactly what
14 the Washington Chapter told Defendants they could do.

15 **E. The Tortious Interference Claim Must be Dismissed for Lack of Damages**

16 In addition to failing for the reasons set forth above, UFC’s tortious interference claim
17 fails as a matter of law because UFC cannot establish actual damages. *Pleas v. City of Seattle*,
18 112 Wn. 2d 794, 803-04 (1989) (“[A] cause of action for tortious interference arises from
19 either the defendant’s pursuit of an improper objective of harming the plaintiff or the use of
20 wrongful means that in fact cause injury to plaintiff’s contractual or business relationships.”).
21 If a plaintiff does not establish actual damages as a result of the interference, the claim must
22 be dismissed. *See Life Designs Ranch, Inc. v. Sommer*, 191 Wn. App. 320, 338 (2015)
23 (dismissing a tortious interference claim for failure to show actual damages). UFC has not
24 shown any actual damage to UFC versus the non-party Washington Chapter. This is fatal to
25 UFC’s claim. When asked during discovery to identify damages to UFC (as opposed to the
26 Washington Chapter), UFC was unable to do so, neither articulating how UFC (as opposed

1 to the Washington Chapter) was harmed or providing any evidence in support of actual
2 damages incurred by UFC. Roller Decl. ¶8 & Ex. 5 (Rog 24) (23). Unable to show any actual
3 damages, UFC’s tortious interference claim fails as a matter of law. *See, e.g., Life Designs*
4 *Ranch*, 191 Wn. App. at 338 (“Decisive is the fifth element. Life Designs fails to show
5 resultant damage to its business expectancy. The trial court did not err in dismissing this claim
6 because Life Designs’ conclusory claim of injury to reputation lacks evidentiary support. No
7 client, potential client, or referral source submitted an affidavit . . .”).

8 **F. Defendants’ Counterclaim for Declaratory Relief Should be Granted**

9 Defendants seek a declaratory judgment finding that that UFC has no rights or interest
10 in the Memes Page and that Defendants may lawfully use the Memes Page. For the reasons
11 discussed above, Defendants respectfully request that in addition to dismissing UFC’s claims
12 against it, the Court affirmatively grant this declaratory relief.

13 **VI. CONCLUSION**

14 The Court should dismiss all of UFC’s claims with prejudice and grant Defendants’
15 request for declaratory relief.

16
17 *I certify this memorandum contains 8,384 words in compliance with the Local Rules.*

18 DATED: August 23, 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 23rd day of August, 2024 in Seattle, Washington.

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