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SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

United Federation of Churches, LLC (dba)
"The Satanic Temple"))
)
Plaintiff,)
)
v.)
)
David Alan Johnson (AKA "ADJ"),)
Leah Fishbaugh, Mickey Meehan, and Na-)
than Sullivan,)
)
Defendants.)

Case No. 23-2-06120-9 SEA

MOTION FOR PARTIAL
SUMMARY JUDGMENT AS TO
LIABILITY ON THE TRESPASS TO
CHATELS AND CONVERSION
COUNTS
AND APPLICATION FOR
DELIVERY

COMES NOW Plaintiff ("TST"), by and through counsel of record, on motion for partial summary judgment as to liability on the trespass to chattels and conversion counts pursuant to Wash. Super. Ct. Civ. R. 56; and on application for delivery pursuant to RCW § 7.64.020.

Relief Requested

TST seeks a partial summary judgment which finds Defendants liable for trespass to chattels and conversion counts and an order to show cause why Defendants should not return the Allies page.

Evidence Relied Upon

TST relies on Declarations from Rachel Chambliss, Tarkus Claypool, Siri Sanguine, and Matt Kezhaya; each with exhibits. By way of exhibits, TST relies on verified copies of: Affiliation Agreements in place at the times that the Allies Page was created and that the Allies Page was stolen, the original complaint filed in federal court which sought injunctive relief for a return of the Allies Page, the formal demand for a return of the Allies Page, documents evidencing the disposition of the federal proceedings, and statements derived from Defendants' amended answer, Defendants'

1 motion to voluntarily dismiss, and a sworn screenshot of the times and dates Defendant Meehan /
2 Powell removed TST's approved administrators of the Allies Page.

3 **Factual and Procedural Background**

4 Plaintiff The Satanic Temple is a nontheistic religious organization with a presence in
5 Washington. Decl. Chambliss ¶ 2. At all times relevant to this dispute, there were three affiliates
6 entrusted with Washington Chapter operations: 2018 Chapterhead Lilith Starr, 2019 Chapterhead
7 Siri Sanguine, and Media Liaison Tarkus Claypool. A Media Liaison is "a vetted member of an
8 affiliated chapter who is responsible for the public image of their Chapter and, by extension, the
9 image of The Satanic Temple in that area." Decl. Claypool ¶ 2.

10 Both roles, the Chapterhead and Media Liaison, were the subject of Affiliation Agreements
11 which contemplated the creation of social media accounts, including Facebook pages, to further
12 TST's organizational purposes. See **Exhibit 1** (Affiliation Agreement of Lilith Starr), **Exhibit 2**
13 (Affiliation Agreement of Siri Sanguine), and **Exhibit 4** (Affiliation Agreement of Tarkus Claypool)
14 at § 1(b), (c), (e):

15 1(b). "Affiliate Online Presence" means any ... Facebook page ... or other social
16 media account[] ... which was created or exists to promote the Purpose of
17 TST.

18 1(c). "Protected Content" means any content or information that displays or uses
19 the trade name, logo, or trademark commonly known as THE SATANIC
20 TEMPLE.

21 1(e). "Affiliate Content" means any content created by or at the direction of the
22 Affiliate for the Purpose, or which contains any Protected Content.

23 All social media accounts under the agency were subject to TST's control. *Ibid.*, § 3(b), (c) and §
24 4(c), (d):

25 3(b). Affiliate agrees to submit any promotional or printed material containing
26 Protected Content to TST for its prior approval. Such material includes, but

1 is not limited to ... social media, the internet, or any other medium. Such
2 approval may be withheld at the sole discretion of TST.

3 3(c). Any advertising and promotional material involving Protected Content shall
4 be consistent with the quality and professionalism previously associated with
5 TST. Content must comply with the standards, tenets, philosophy, and spirit
6 of TST.

7 4(c). All Affiliate social media accounts which feature Affiliate Content must be
8 structured in a way that allows members of TST's Executive Ministry and/or
9 National Council full administrative access to and control of the account. By
10 way of example, on platforms such as Instagram and Twitter, this means the
11 email address associated with the account must have an @ domain name that
12 is registered or owned by TST, and on Facebook this means that a member
13 of Executive Ministry and/or National Council must have administrative
14 rights for the page or group.

15 4(d). Upon termination of this Agreement for any reason, Affiliate must provide
16 any and all information necessary for TST to assume control over any social
17 media or other online account created for the Purpose or containing
18 Protected Content. At TST's sole discretion, it may instead request, and
19 Affiliate shall, permanently delete any such account in its entirety, without
20 the capability of future recovery.

21 And the Affiliation Agreements reserved to the Temple all property rights created under the
22 agency. *Ibid.*, § 6(a):

23 (a)(1). Affiliate shall acquire no ownership rights to the Protected Content by virtue
24 of this Agreement, and that all uses by Affiliate of Protected Content shall
25 not form the basis for any claim of ownership in, or in any way affect or
26 impair the ownership of the Protected Content by TST.

1 (a)(2). Affiliate shall not during the term of this Agreement or at any time thereafter,
2 directly or indirectly, contest or aid others in contesting TST’s ownership of
3 Protected Content.

4 No part of either agreement suggests that an affiliate may waive or release any causes of action
5 which accrue to the Temple for, e.g., theft of any social media accounts created under the agency.
6 *See ibid.*, § 14 (merger clause).

7 In September 2018, the Washington Chapter created the Facebook page “South Sound
8 Satanists: Friends of TST.” Decl. Chambliss ¶ 5. From its very inception, this page was designed to
9 facilitate communications with individuals who were interested in TST but did not want to identify
10 as a member. Decl. Chambliss ¶ 5. Defendants were entrusted with administrative access to the page
11 over one year after its creation, on December 21, 2019. Decl. Sanguine Ex. 2B. Shortly later, the
12 page was renamed to “TST WA Allies.” Decl. Chambliss ¶ 5.

13 About three months after obtaining the ability to post on the Allies page, in March 2020,
14 Defendants’ operation of the page was called into question. See Decl. Claypool ¶¶ 3-4 and Exhibit
15 5. During their short tenure, Defendants had gone on a “meme spree” about generalized activist
16 issues, which was problematic because the account was created to be “for and about Satanism.” Ex.
17 3B, at 4. TST emphasized its requirement that “Content should be relevant to either TST, Satanism,
18 or to social issues directly relating to TST’s initiatives/campaigns.” Id. Defendant Powell (under the
19 pseudonym “Lenore Calavera”) acknowledged TST’s right to control the Allies page. Decl.
20 Claypool ¶ 3; Ex. 3B, at 3 (“I’ve asked ADJ to remove it because I see no reason to die on this hill.”)

21 Defendants were not willing to follow the Temple’s directives for long, however. On March
22 12, 2020, the Washington Chapter removed Defendants from their positions of authority over the
23 Allies Page. Am. Compl. ¶¶ 33-34; Defendants’ First Amended Answer, Affirmative Defenses and
24 Counterclaims (“Am. Answer”) ¶¶ 33-34. On March 14, 2020, Defendant Powell retaliated by
25 removing all Temple-approved editors and administrators to the Allies Page and changed its name
26 to “Evergreen Memes for Queer Satanic Fiends.” Am. Counterclaims ¶ 50; see also Decl. Chambliss

1 ¶ 5 and Exhibit 3. About two hours later, Defendant Powell posted: “This page is no longer affiliated
2 with The Satanic Temple.” Am. Counterclaims ¶ 53; *see also* Am. Compl. ¶ 36.

3 That evening, Claypool offered Defendants an olive branch, stating without authority that
4 the Allies page is “yours free and clear and we’ve no desire to claim it,” continuing: “I wish you and
5 your family well, and respect your need to fight the fight your way.” Am. Counterclaims ¶ 54
6 (emphasis removed). Claypool made similar statements in a town hall with the Washington Chapter.
7 *See id.*, ¶ 55. But Defendants never understood these statements to be a transfer of ownership rights
8 to the Allies Page or a waiver of the Temple’s right to sue. Shortly later after this alleged waiver,
9 Defendant Sullivan publicly declared that they “stole” the page. Decl. Claypool ¶ 5:



11 **Nathan Von Sullivan** we have a meme page here that we
12 stole from TST:
[Evergreen Memes for Queer Satanic Fiends](#)

13 and a small group of regional satanists that we're using as a
14 sort of safe space and social club. I imagine i'll be setting up
another Discord for us too

15 [Like](#) · [Reply](#) · 8w

4

16
17 About four days later, proving that no good deed goes unpunished, Defendant Johnson stole
18 the Chapter page. Decl. Claypool ¶ 6. Subsequently, Defendants “doxed” Claypool and harassed
19 him to such an extent that he no longer publicly associates with the Temple. Decl. Claypool. ¶¶ 6-
20 7. This is part of their general scorched-earth campaign against anyone affiliated with TST. Decl.
21 Claypool ¶ 6.

22 At no point has any agent of TST with authority to transfer property or waive claims released
23 the Defendants from the legal liability which accrues when one steals the property of another.
24 Rather, TST issued a complaint which specifically sought injunctive relief that “Defendants shall,
25 jointly and severally, immediately return full control of the following to Plaintiff, under threat of
26 contempt: ... (b) the Allies Facebook Page.” Decl. Kezhaya at 20. The original complaint was issued

1 less than one month after the theft of the Allies page and exactly two weeks after the theft of the
2 Chapter page. In June 2022, Plaintiff through counsel also issued a formal demand for the return of
3 full control over the Allies page to TST. Decl. Kezhaya at 24. They ignored that demand and have
4 been in continuous possession of the Allies page since March 14, 2020. Decl. Claypool ¶ 4; Decl.
5 Kezhaya at 1-2 ¶ 3.

6 However, Defendants’ first Rule 12(b)(6) proved that Plaintiff’s legal theories (none of
7 which included trespass to chattels or conversion) were ineffective to obtain the injunction sought.
8 See Decl. Kezhaya at 15-20; *United Fed’n of Churches, LLC v. Johnson*, 522 F. Supp. 3d 842 (W.D.
9 Wash. 2021). In accordance with the District Court’s authorization, Plaintiff amended the complaint
10 to seek this relief through a trespass to chattels and conversion theory, which survived Defendants’
11 second Rule 12(b)(6) motion. See Decl. Kezhaya at 1-2 ¶ 3; *United Fed’n of Churches, LLC v.*
12 *Johnson*, 598 F. Supp. 3d 1084, 1099–101 (W.D. Wash. 2022). Upon Defendants’ third motion to
13 dismiss, this time attacking the amount in controversy, the District Court dismissed the remaining
14 counts which resulted in the litigation being refiled here. Decl. Kezhaya at 28-32. The Ninth Circuit
15 vacated the dismissal of the defamation count, remanded for a reevaluation of the ecclesiastical
16 abstention doctrine, and noted that this reevaluation would have to follow a second analysis of the
17 federal complaint’s amount in controversy allegations. Decl. Kezhaya at 36-37. That would have
18 entailed an amended complaint and at least two more motions to dismiss, which would incur more
19 costs and delay than any favorable judgment would be worth. Decl. Kezhaya at 2 ¶ 6.

20 To simplify the issues and expedite finality, the Temple opted to pursue its relief solely in
21 this Court. Decl. Kezhaya at 2 ¶ 6 and 39-40. To frustrate that purpose, Defendants issued a
22 counterclaim predicated on the notion that the litigation is “meritless” and therefore an abuse of
23 process. See Am. Counterclaim at ¶¶ 98-102. That counterclaim was frivolous from the day it was
24 brought: “(The) initiation of vexatious civil proceedings known to be groundless is not abuse of
25 process.” *Batten v. Abrams*, 28 Wash. App. 737, 749 (1981). Defendants’ motion for voluntary
26 shows that the counterclaim was a distraction tactic. Defendants’ Motion to Voluntarily Dismiss, at

1 2:17-21 (acknowledging that fighting the anti-SLAPP motion “would not bring them closer to
2 resolution”). And reveals that if money were no object they would have happily wasted more time
3 on the meritless gambit. *Id.* (because of their “limited funds,” they must make the “difficult decision
4 ... to move this case more directly to a final resolution.”) Given that they procured a dismissal
5 without prejudice, they intend to keep that option open.

6 And, contrary to their tiresome claim that the Temple is trying to “silence” them through
7 this litigation, see *id.*, this litigation has always stood for the proposition of “that’s mine, give it
8 back.” *SEIU Healthcare Nw. Training P’ship v. Evergreen Freedom Found.*, 5 Wash. App. 2d 496,
9 500 (2018) (internal quotes omitted). For the past four years, Defendants have freely availed
10 themselves of the right to create their own separate websites and separate social media accounts to
11 make a litany of inane commentary about the Temple and anyone publicly affiliated with it, all
12 without interference by the Temple. See Decl. Claypool ¶ 6. The issue before the Court is not their
13 commentary, it is the theft.

14 **Argument**

15 Plaintiff moves the Court for partial summary judgment as to liability on the conversion and
16 trespass to chattels claim, and for an order to show cause why Defendants should not be ordered to
17 immediately turn over the Allies page. The motion for partial summary judgment is brought under
18 CR 56(a), and the petition for replevin is brought under RCW § 7.64.020.

19 **I. Legal standards**

20 **Summary Judgment**

21 Summary judgment is proper when there is no genuine issue as to any material fact and the
22 moving party is entitled to judgment as a matter of law. *Macias v. Saberhagen Holdings, Inc.*, 175
23 Wash. 2d 402, 408 (2012); CR 56(c). There is a “genuine dispute” is one upon which reasonable
24 people may disagree. *Youker v. Douglas Cnty.*, 178 Wash. App. 793, 796 (2014). A “material fact”
25 is one which controls the outcome of the litigation. *Id.* All facts and reasonable inferences are
26 construed in the light most favorable to the nonmoving party. *Id.*

1 **Replevin**

2 To obtain an order to show cause why a defendant should not be directed to turn over
3 property owning pending the final judgment, the replevin statute requires a plaintiff to provide an
4 affidavit or declaration showing that it is “the owner of the property or is lawfully entitled to the
5 possession of the property by virtue of a special property interest” and “the property is wrongfully
6 detained by defendant.” RCW § 7.64.020(2). Upon such a showing, the plaintiff is entitled to “an
7 order directing the defendant to appear and show cause why an order putting the plaintiff in
8 immediate possession of the personal property should not be issued.” RCW § 7.64.020(1).

9 **II. The Court should enter liability judgments on Count 2 (Trespass to chattels)**
10 **and Count 3 (Conversion).**

11 At issue are Counts 2 and 3, for trespass to chattels and conversion. The two torts are
12 typically addressed in tandem. *E.g.*, *Sexton v. Brown*, 147 Wash. App. 1005 (2008). A trespass
13 to chattels is “something less than a conversion.” *Damiano v. Lind*, 163 Wash. App. 1017 at *5
14 (2011) (unpublished opinion) (citing *Restatement (Second) of Torts* § 217 (1965)); *see also Intel*
15 *Corp. v. Hamidi*, 30 Cal. 4th 1342, 1350, 71 P.3d 296, 302 (2003) (“Dubbed by Prosser the ‘little
16 brother of conversion,’ the tort of trespass to chattels allows recovery for interferences with
17 possession of personal property ‘not sufficiently important to be classed as conversion, and so to
18 compel the defendant to pay the full value of the thing with which he has interfered’).

19 Conversion occurs upon “the act of willfully interfering with any chattel, without lawful
20 justification, whereby any person entitled thereto is deprived of the possession of it.” *Consulting*
21 *Overseas Mgmt., Ltd. v. Shtikel*, 105 Wash. App. 80, 83 (2001). Wrongful intent is not an element
22 of conversion, and good faith is not a defense. *Paris Am. Corp. v. McCausland*, 52 Wash. App.
23 434, 443, 759 P.2d 1210 (1988). In a conversion action, “neither care nor negligence, neither
24 knowledge nor ignorance, are of the gist of the action.” *In re Marriage of Langham & Kolde*,
25 153 Wash. 2d 553, 560 (2005). A trespass to chattels differs from conversion in that no intent to
26 deprive the owner must be shown. *Judkins v. Sadler-Mac Neil*, 61 Wash. 2d 1, 4 (1962).

1 The Allies Page is chattel property. Although Washington has not squarely addressed the
2 question, California courts have resolved that dispossession of access to a computer system is an
3 actionable trespass to chattels. *See Synopsys, Inc. v. Ubiquiti Networks, Inc.*, 313 F. Supp. 3d
4 1056, 1080 (N.D. Cal. 2018); *Intel Corp. v. Hamidi*, 30 Cal. 4th 1342, 1351, 71 P.3d 296, 303
5 (2003). More generally, Washington has resolved that parties have a “property interest” in their
6 electronic data. *Evergreen Freedom Found.*, 5 Wash. App. 2d at 512 (holding that the replevin
7 statute applies to electronic spreadsheets because parties have a “possessory interest in the
8 information” which includes the “right to control whether others can have access to the
9 information”). Because a social media account is electronic data with controls over who can
10 access the administrative functions and controls over who can publish information in the name
11 of that social media account, the Court should find that the social media account at issue is a
12 chattel interest.

13 When Defendants “stole” the Allies Page “from TST,” Decl. Claypool ¶ 5, they stole a
14 social media account from the Temple. The Affiliation Agreements contemplated the creation of
15 social media accounts, including Facebook pages, to further the Temple’s organizational purposes.
16 Exhibit 1 (2018 Affiliation Agreement of Lilith Starr); Exhibit 2 (2019 Affiliation Agreement of
17 Siri Sanguine), and Exhibit 4 (2020 Affiliation Agreement of Tarkus Claypool), at § 1(b), (c) and
18 (e); § 2, and § 4. All social media accounts created under the agency were subject to the Temple’s
19 control. *Ibid.*, § 3(b), (c) and § 4(c), (d). And the Affiliation Agreements reserve to the Temple all
20 property rights created under the agency. *Ibid.*, § 6(a).

21 Defendants have already entered judicial admissions that they intentionally deprived TST of
22 the Allies Page. Am. Counterclaims ¶ 50 (admitting that Meehan / Powell removed all TST-
23 approved editors and administrators from the Allies Page and renamed the Allies page); *see also*
24 Exhibit 3. This was done two days after their authority to manage the Temple’s social media activity
25 had been revoked. Am. Answer ¶ 33-34 (admitting that their authority was pursuant to their roles
26 on the advisory council, which had been disbanded on March 12, 2020). And this decision was not

1 authorized by any TST-approved administrator. Decl. Sanguine ¶ 4.

2 When Defendants dispossessed TST from its social media page, they became liable for both
3 trespass to chattels and conversion. Because Defendants' amended answer admits that they
4 dispossessed TST from its social media page, the Court should enter summary judgment as to
5 liability on these two claims.

6 **III. Defendants' affirmative defenses are wholly without merit.**

7 Defendants' answer advances two affirmative defenses to the trespass to chattels and
8 conversion claims: (1) the claims are brought too late, whether couched as a statute of limitations
9 bar or a laches defense; and (2) the claims were waived by Media Liaison Claypool's statements or
10 by Chapterhead Sanguine's failure to correct the same. Neither has merit.

11 The statute of limitations for both trespass to chattels and conversion is three years from the
12 date of the theft. *VFW 3348 Found. v. Brede*, 189 Wash. App. 1045 (2015); RCW § 4.16.080(2)
13 ("The following actions shall be *commenced* within three years ... (2) An action for taking ...
14 personal property.") Defendants stole the Allies Page on March 14, 2020. Counterclaims ¶ 50;
15 Answer ¶ 36. The litigation commenced 21 days later, on April 3, 2020. Decl. Kezhaya at 5-22;
16 *United Fed'n of Churches, LLC v. Johnson*, 522 F. Supp. 3d 842, 847 (W.D. Wash. 2021) ("On
17 April 3, 2020, The Satanic Temple filed the instant complaint.") The institution of proceedings in
18 federal court "commences" litigation when construing State-law statutes of limitation. *Artis v. D.C.*,
19 583 U.S. 71, 84 (2018) ("the limitations clock stops the day the claim is filed in federal court and,
20 30 days postdismissal, restarts from the point at which it had stopped"). The federal case was
21 dismissed without prejudice for an insufficient amount in controversy on January 9, 2023. Decl.
22 Kezhaya at 28-32. Plaintiff re-commenced the litigation in this Court 87 days later, on April 5, 2023.
23 There were 21 days that passed between the theft of the Allies Page and the filing of the federal
24 lawsuit, *plus* 87 days between dismissal and the filing of this lawsuit, *less* 30 days under *Artis*, which
25 results in 78 days between the theft and the "commencement" of this litigation. As 78 days is far
26 fewer than the 1,095 days permitted by statute (1095 days = 3 years x 365 days per year), the statute

1 of limitations is no defense.

2 Defendants' laches defense fares no better. "Laches is an equitable doctrine courts apply to
3 protect a party from an unreasonable prejudicial delay." *Tupper v. Tupper*, 15 Wash. App. 2d 796,
4 810-11 (2020). This is an "extraordinary remedy that should be used sparingly." *Id.* Defendants bear
5 the burden of proof to show: (1) an inexcusable delay; and (2) prejudice resulting therefor. *Id.*
6 Prejudice is the "main component" of the defense and requires Defendants to show that they have
7 "so altered [their] position that it would be inequitable to enforce the claim." *Id.* "Mere delay, lapse
8 of time, and acquiescence are insufficient to establish laches." *Id.* Defendants can claim no prejudice
9 from the cumulative 78-day delay in commencing these proceedings. To the contrary, their position
10 all along has been to delay this action for as long as possible with three rounds of motions to dismiss
11 and a patently frivolous abuse of process counterclaim.

12 That just leaves Defendants' argument that Claypool waived the Temple's claim on the
13 evening that they stole the Allies Page when he said: "I just wanted to let you know that it's yours
14 free and clear and we've no desire to claim it." Am Counterclaim ¶ 54. An agent is authorized to
15 do, "and to do only," what is reasonable for him to infer what the principal desires him to do in the
16 light of the principal's manifestations. *Restatement (Second) of Agency* § 33 (1958). "[I]n no event
17 must he act contrary to what he reasonable believes the principal desires him to do." *Id.*, cmt. a. The
18 agent's authority "is bounded by the principal's will as manifested to him." *Id.* Claypool explicitly
19 agreed that he "*shall not* ... directly or indirectly ... aid others in contesting TST's ownership of
20 Protected Content." Exhibit 4 at § 6(a)(2) (emphasis added); see also Decl. Claypool ¶ 6. Claypool
21 was also contractually prohibited from assigning, pledging, sublicensing, or transferring his rights
22 under the Affiliation Agreement. *Id.* § 7. Claypool's misplaced appeasement strategy was wholly
23 without authority and is not binding on TST. *See Manger v. Davis*, 619 P.2d 687, 693 (Utah 1980)
24 (security interest invalid because it was predicated on an unauthorized pledge).

25 Defendants will presumably respond that while Claypool clearly had no *actual* authority,
26 perhaps he had *apparent* authority. *See Restatement (Second) of Agency* §§ 27 and 49, cmt. (1958).

1 “The authorized possession of a chattel by the agent does not of itself create apparent authority for
2 him to sell or otherwise deal with it.” *Id.* § 49, cmt. *d.* Apparent authority only arises from “spoken
3 words or any other conduct of the principal,” not upon unauthorized statements of the agent. *Id.* §
4 27; *see also Smith v. Hansen, Hansen & Johnson, Inc.*, 63 Wash. App. 355, 363 (1991) (“The
5 objective manifestations must be those of the principal.”) Defendants cannot point to any statements
6 by an *authorized* agent of TST to the effect that Defendants may keep the Allies Page. *See Smith*,
7 63 Wash App. at 364. And even if there were such an authorized statement, it is elemental to
8 apparent authority that Defendants “actually, *i.e.*, subjectively, believe that the agent has authority
9 to act for the principal.” *Id.* Defendant Sullivan’s public declaration that Defendants “stole” the
10 Allies Page bars any claim that they subjectively believed Claypool had given it away.

11 Apparent authority not only requires a subjective belief the agent has authority, it also
12 requires that the belief be reasonable. *Id.* Just three weeks after Defendants stole the Allies Page,
13 TST issued a complaint seeking an order that “Defendants shall, jointly and severally, immediately
14 return full control of ... The Allies Facebook Page.” Decl. Kezhaya at 20 (*ad damnum* ¶ 1(b)). Any
15 reasonable person would have immediately understood from the complaint that TST did not
16 authorize their continued possession of it. Yet they attacked the claims on the ground that there was
17 no formal demand for its return. *See Johnson*, 598 F. Supp. 3d at 1098–101 (rejecting Defendants’
18 theory). In response, TST through counsel issued a formal demand for its return. Decl. Kezhaya at
19 24. That formal demand would have informed any reasonable person that their continuous
20 possession of TST’s property was without permission. Yet they never returned the Allies Page. Decl.
21 Kezhaya at 2 ¶ 3. Because Defendants publicly declared that they “stole” the Allies Page, ignored a
22 federal complaint for its return, and ignored a formal demand for its return, no reasonable juror can
23 find that Defendants either subjectively or reasonably believed Claypool had apparent authority to
24 give the Allies Page or release the claims for its theft.

25 For the same reasons, Sanguine’s failure to negate Claypool’s unauthorized statements did
26 not create any apparent authority. *See Am. Counterclaim* ¶¶ 55-56. “Apparent authority is not

1 created, however, merely because the agent is appointed to or occupies a high position in the
2 principal's organization.” *Smith*, 63 Wash. App. at 365. Defendants knew they took the Allies Page
3 without lawful authority and ignored all legal demands for its return. Thus, Defendants’ waiver
4 argument is no bar to a summary judgment.

5 The Court should enter a liability judgment against Defendants for conversion (if the Court
6 finds they intentionally deprived the Temple of the Allies Page), for trespass to chattels (if the Court
7 finds that they are merely in wrongful possession of the Allies Page), or both.

8 **IV. The Court should issue an order to show cause why the Allies Page should not**
9 **be returned to Plaintiff *pendente lite*.**

10 Further, the Court should enter an order to show cause why the Allies page should not be
11 immediately returned to TST. “Replevin is an ancient remedy for an ancient problem that can be
12 phrased as ‘that’s mine, give it back.’” *Evergreen Freedom Found.*, 5 Wash. App. 2d at 500. The
13 elements are: (1) ownership of the property, (2) a right to its possession, (3) a demand on the
14 respondents for its surrender, (4) their refusal to surrender it, and (5) their consequent wrongful
15 detention of same. *Id.* The plaintiff must further “be able to prevail on the strength of its title or
16 right, regardless of the defendant’s title or right to possession.” *Graham v. Notti*, 147 Wash. App.
17 629, 635 (2008).

18 As more comprehensively addressed above, each element is satisfied. *First*, the Temple
19 owns the Allies Page because the account was created by the Temple’s agents in the course of the
20 agency to further the Temple’s organizational purposes and the rights to ownership are addressed in
21 the Affiliation Agreements. *Second*, the Temple is entitled to its possession through the Affiliation
22 Agreements, which specifically provide for full “administrative access to and control of the account”
23 being vested with the Temple’s central decisionmakers. *Third*, the Temple issued a formal demand
24 upon Defendants for a return of the Allies Page on June 22, 2022. *Fourth*, Defendants refused to
25 return the Allies Page. *Fifth*, Defendants are consequently in wrongful possession of the same.

1 **Conclusion**

2 **WHEREFORE** the Court should enter an order finding Defendants liable for conversion
3 and trespass to chattels, should order Defendants to show cause why an order putting the plaintiff
4 in immediate possession of the personal property should not be issued, and should include in its
5 order a notice that failure to promptly turn over possession of the property to the plaintiff may
6 subject them to being held in contempt of court.

7 Respectfully submitted this 23rd day of August, 2024.

8 LYBECK PEDREIRA & JUSTUS, PLLC

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26 **Certificate of compliance**

I certify that the foregoing contains **4490** words, in compliance with the Local Civil Rules.

1 **CERTIFICATE OF SERVICE**

2 I hereby declare under penalty of perjury under the laws of the State of Washington that
3 I have caused to be served a true and correct copy, except where noted, of the below described
4 documents upon the individual(s) listed by the following means:

<p>5 Attorney for Defendants David Alan Johnson (AKA "ADJ"), Leah Fishbaugh, Mickey Meeham, and Nathan Sullivan,</p> <p>6</p> <p>7 Jeremy Roller, Esq. Lisa M. Herb, Esq. 8 Arete Law Group 1218 Third Ave., Ste. 2100 9 Seattle, WA 98101</p> <p>10 Office: 206-428-3250 11 Direct: 206-428-3254 12 Fax: 206-428-3251</p>	<p>[X] Via e-service [X] Via email to jroller@aretelaw.com; lherb@aretelaw.com</p>
<p>13 Service of: 14 MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO LIABILITY ON THE TRESPASS TO CHATTELS AND CONVERSION COUNTS 15 AND APPLICATION FOR DELIVERY</p>	
<p>16 DATED: August 23, 2024</p>	<p>17 By: <u> /s/ Benjamin Justus </u> Benjamin Justus</p>