Hon. Judge Suzanne Parisien, Dept. 42

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 Nathan Sullivan, Defendants.	Case No. 23-2-06120-9 SEA PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

COMES NOW Plaintiff ("**TST**"), by and through counsel of record, with a response in opposition to Defendants' motion for summary judgment.

Relief Requested

The Court should refuse Defendants' motion for summary judgment in full or should order a continuance on Defendants' motion for further discovery proceedings. TST has separately cross-moved for 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.

Statement of Facts

Plaintiff The Satanic Temple is a nontheistic religious organization with a presence in Washington. Decl. Chambliss ¶ 2. At all times relevant to this dispute, there were three affiliates entrusted with Washington Chapter operations: 2018 Chapterhead Lilith Starr, 2019 Chapterhead Siri Sanguine, and Media Liaison Tarkus Claypool. A Media Liaison is "a vetted member of an

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affiliated chapter who is responsible for the public image of their Chapter and, by extension, the image of The Satanic Temple in that area." Decl. Claypool ¶ 2.

Both roles, the Chapterhead and Media Liaison, were the subject of Affiliation Agreements which contemplated the creation of social media accounts, including Facebook pages, to further TST's organizational purposes. See Dkt. 34 (Decl. Chambliss), Exhibit 1 (Affiliation Agreement of Lilith Starr), Dkt. 35 (Decl. Sanguine), Exhibit 2 (Affiliation Agreement of Siri Sanguine), and Dkt. 33 (Decl. Claypool), Exhibit 4 (Affiliation Agreement of Tarkus Claypool) at § 1(b), (c), (e):

> 1(b). "Affiliate Online Presence" means any … Facebook page … or other social media account[] … which was created or exists to promote the Purpose of TST.
>
> 1(c). "Protected Content" means any content or information that displays or uses the trade name, logo, or trademark commonly known as THE SATANIC TEMPLE.
>
> 1(e). "Affiliate Content" means any content created by or at the direction of the Affiliate for the Purpose, or which contains any Protected Content.

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

> 3(b). Affiliate agrees to submit any promotional or printed material containing Protected Content to TST for its prior approval. Such material includes, but is not limited to … social media, the internet, or any other medium. Such approval may be withheld at the sole discretion of TST.
>
> 3(c). Any advertising and promotional material involving Protected Content shall be consistent with the quality and professionalism previously associated with TST. Content must comply with the standards, tenets, philosophy, and spirit of TST.

/ / /

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

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

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

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

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

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

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In September 2018, the Washington Chapter created the Facebook page "South Sound Satanists: Friends of TST." Dkt. 34 (Decl. Chambliss) ¶ 5. From its very inception, this page was designed to facilitate communications with individuals who were interested in TST but did not want to identify as a member. Id. ¶ 5. Defendants were entrusted with administrative access to the page over one year after its creation, on December 21, 2019. Dkt. 35 (Decl. Sanguine) Exhibit 3. Shortly later, the page was renamed to "TST WA Allies." Decl. Chambliss ¶ 5.

About three months after obtaining the ability to post on the Allies page, in March 2020, Defendants' operation of the page was called into question. See Dkt. 33 (Decl. Claypool) ¶¶ 3-4 and Exhibit 5. During their short tenure, Defendants had gone on a "meme spree" about generalized activist issues, which was problematic because the account was created to be "for and about Satanism." Id., Exhibit 5 at 4. TST emphasized its requirement that "Content should be relevant to either TST, Satanism, or to social issues directly relating to TST's initiatives/campaigns." Id. Defendant Powell (under the pseudonym "Lenore Calavera") acknowledged TST's right to control the Allies page. Dkt. 33 (Decl. Claypool) ¶ 3; id. at Exhibit 5, at 3 ("I've asked ADJ to remove it because I see no reason to die on this hill.")

Defendants were not willing to follow TST's directives for long, however. On March 12, 2020, the Washington Chapter removed Defendants from their positions of authority over the Allies Page. Am. Compl. ¶¶ 33-34; Defendants' First Amended Answer, Affirmative Defenses and Counterclaims ("Am. Answer") ¶¶ 33-34. On March 14, 2020, Defendant Powell retaliated by removing all Temple-approved editors and administrators to the Allies Page and changed its name to "Evergreen Memes for Queer Satanic Fiends." Am. Counterclaims ¶ 50; see also Decl. Chambliss ¶ 5 and Exhibit 3. About two hours later, Defendant Powell posted: "This page is no longer affiliated with The Satanic Temple." Am. Counterclaims ¶ 53; *see also* Am. Compl. ¶ 36.

That evening, Claypool offered Defendants an olive branch, stating without authority that the Allies page is "yours free and clear and we've no desire to claim it," continuing: "I wish you and your family well, and respect your need to fight the fight your way." Am. Counterclaims ¶ 54

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(emphasis removed). Claypool made similar statements in a town hall with the Washington Chapter. *See id.*, ¶ 55. But Defendants never understood these statements to be a transfer of ownership rights to the Allies Page or a waiver of TST's right to sue. Shortly later after this alleged waiver, Defendant

Nathan Von Sullivan we have a meme page here that we stole from TST:
Evergreen Memes for Queer Satanic Fiends

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

Like · Reply · 8w   4

Sullivan publicly declared that they "stole" the page. Decl. Claypool ¶ 5:

About four days later, proving that no good deed goes unpunished, Defendant Johnson stole the Chapter page. Dkt. 33 (Decl. Claypool) ¶ 6. Subsequently, Defendants "doxed" Claypool and harassed him to such an extent that he no longer publicly associates with TST. Dkt. 33 (Decl. Claypool) ¶¶ 6-7. This is part of their general scorched-earth campaign against anyone affiliated with TST. Dkt. 33 (Decl. Claypool) ¶ 6.

At no point has any agent of TST with authority to transfer property or waive claims released the Defendants from the legal liability which accrues when one steals the property of another. Rather, TST issued a complaint which specifically sought injunctive relief that "Defendants shall, jointly and severally, immediately return full control of the following to Plaintiff, under threat of contempt: … (b) the Allies Facebook Page." Dkt. 32 (Decl. Kezhaya) at 20. The original complaint was issued less than one month after the theft of the Allies page and exactly two weeks after the theft of the Chapter page. In June 2022, Plaintiff through counsel also issued a formal demand for the return of full control over the Allies page to TST. Decl. Kezhaya at 24. They ignored that demand and have been in continuous possession of the Allies page since March 14, 2020. Dkt. 33 (Decl. Claypool) ¶ 4; Dkt. 32 (Decl. Kezhaya) at 1-2 ¶ 3.

However, Defendants' first Rule 12(b)(6) proved that Plaintiff's legal theories (none of

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which included trespass to chattels or conversion) were ineffective to obtain the injunction sought. See Dkt. 32 (Decl. Kezhaya) at 15-20; *United Fed'n of Churches, LLC v. Johnson*, 522 F. Supp. 3d 842 (W.D. Wash. 2021). In accordance with the District Court's authorization, Plaintiff amended the complaint to seek this relief through a trespass to chattels and conversion theory, which survived Defendants' second Rule 12(b)(6) motion. See Dkt. 32 (Decl. Kezhaya) at 1-2 ¶ 3; *United Fed'n of Churches, LLC v. Johnson*, 598 F. Supp. 3d 1084, 1099–101 (W.D. Wash. 2022). Upon Defendants' third motion to dismiss, this time attacking the amount in controversy, the District Court dismissed the remaining counts which resulted in the litigation being refiled here. Dkt. 32 (Decl. Kezhaya) at 28-32. The Ninth Circuit vacated the dismissal of the defamation count, remanded for a reevaluation of the ecclesiastical abstention doctrine, and noted that this reevaluation would have to follow a second analysis of the federal complaint's amount in controversy allegations. Dkt. 32 (Decl. Kezhaya) at 36-37. That would have entailed an amended complaint and at least two more motions to dismiss, which would incur more costs and delay than any favorable judgment would be worth. Dkt. 32 (Decl. Kezhaya) at 2 ¶ 6.

To simplify the issues and expedite finality, TST opted to pursue its relief solely in this Court. Dkt. 32 (Decl. Kezhaya) at 2 ¶ 6 and 39-40. To frustrate that purpose, Defendants issued a counterclaim predicated on the notion that the litigation is "meritless" and therefore an abuse of process. See Am. Counterclaim at ¶¶ 98-102. That counterclaim was frivolous from the day it was brought: "(The) initiation of vexatious civil proceedings known to be groundless is not abuse of process." *Batten v. Abrams*, 28 Wash. App. 737, 749 (1981). Defendants' motion for voluntary dismissal shows that the counterclaim was a distraction tactic. Defendants' Motion to Voluntarily Dismiss, at 2:17-21 (acknowledging that fighting the anti-SLAPP motion "would not bring them closer to resolution"). And reveals that if money were no object they would have happily wasted more time on the meritless gambit. Id. (because of their "limited funds," they must make the "difficult decision … to move this case more directly to a final resolution.") Given that they procured a dismissal without prejudice, they intend to keep that option open.

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1 And, contrary to their tiresome claim that TST is trying to "silence" them through this
2 litigation, *see id.*, this litigation has always stood for the proposition of "that's mine, give it back."
3 *SEIU Healthcare Nw. Training P'ship v. Evergreen Freedom Found.*, 5 Wash. App. 2d 496, 500
4 (2018) (internal quotes omitted). For the past four years, Defendants have freely availed themselves
5 of the right to create their own separate websites and separate social media accounts to make a litany
6 of inane commentary about TST and anyone publicly affiliated with it, all without interference by
7 TST. *See* Dkt. 33 (Decl. Claypool) ¶ 6. The issue before the Court is not their commentary, it is the
8 theft.

9 Despite TST's diligent effort to pursue discovery in this case, Defendants have failed and
10 refused to meet their discovery obligations. Through counsel, TST issued discovery requests to
11 Defendants seeking proof of their income arising from donations and merchandise sales advertised
12 through their use of the Allies Page. Decl. Kezhaya, at 17-20 (**Exhibit 5**, responses to Interrogatories
13 Nos. 8-12). Defendants refused to provide any information, claiming the use of their business name
14 is "vague" and "confusing." Id. There is nothing "vague" or "confusing" about Defendants' business
15 name: they sell competing merchandise under the name "QueerSatanic" and use the Allies Page to
16 advertise that merchandise. See Decl. Chambliss at 2-3 ¶ 3; id. at 24-55 (Exhibit 3). The proof of
17 Defendants' income and profits solely lies in their possession. Pursuant to CR 56(f), the Court
18 should decline to rule on Defendants' motion until they meet their discovery obligations.

19 Similarly, TST has encountered discovery obstruction relating to Defendants' claim that
20 they innocently believe to be in rightful possession of the Allies Page. There is a recording which
21 post-dates the alleged waiver in which it is believed that Defendants openly admit to stealing the
22 Allies Page. See Decl. Kezhaya, at 2-3 ¶ 3. TST timely issued a subpoena which would have
23 permitted its use to respond to Defendants' claim that they innocently believe to be in rightful
24 possession of the Allies Page. Id., at 33-36. The reporter refused to provide the recording. Id., at 38-
25 40. TST timely responded, although no response is required before moving to compel. Id., at 41-45.
26 Despite TST's response, the reporter refused to provide the recording. Likewise, Defendants have

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1 promised to produce all their communications about this case but have failed to provide anything.
2 Id., at 2-3 ¶ 3. The proof of Defendants' contemporaneous statements is in the possession of the
3 reporter and Defendants. Pursuant to CR 56(f), the Court should decline to rule on Defendants'
4 motion until they meet their discovery obligations.
5 / / /
6 / / /

7 **Statement of Issues**

8 • Whether the claims at issue in this case were supplemental jurisdiction claims timely brought
9 alongside federal questions in federal court but involuntarily dismissed.
10 • Whether the written agency agreement and basic agency law controls the ownership of social
11 media accounts, which accounts were made in the course and scope of the agency.
12 • Whether the written agency agreement controls the scope of the agents' actual authority.
13 • Whether a reasonable person would believe that an agent's right to possess chattels connotes
14 the right to convey those chattels, or otherwise waive claims arising from its theft.
15 • Whether Defendants have "unclean hands" where they stole the Allies Page before the
16 alleged waiver, admitted to stealing the Allies Page after the alleged waiver, stole the
17 Chapter Page after the alleged waiver, and provoked this litigation after the alleged waiver.
18 • Whether an agent's gratuitous waiver, if any, had been revoked when the principal brings
19 litigation and issues a formal demand.
20 • Whether Defendants have provided any discovery on damages or equitable estoppel.
21 • Whether equitable defenses are strictly defensive in nature.

22 **Evidence Relied Upon**

23 TST relies on the Declarations submitted in support of its cross-motion for summary
24 judgment, *i.e.*, from Rachel Chambliss (dkt # 34), Tarkus Claypool (dkt # 33), Siri Sanguine (dkt #
25 35), and Matt Kezhaya (dkt # 32); each with exhibits. By way of exhibits, TST relies on verified
26 copies of: Affiliation Agreements in place at the times that the Allies Page was created and that the

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

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Further, TST relies on supplemental Declarations submitted in opposition to Defendants' motion for summary judgment, i.e., from Rachel Chambliss, Tarkus Claypool, and Matt Kezhaya. Rachel Chambliss's declaration comes with exhibits demonstrating that Defendants hold themselves out as a religious organization with ritual activities, and that Defendants sell competing merchandise which is advertised using the Allies Page. Tarkus Claypool's declaration comes with an exhibit, the South Sound Satanists Operational Guide which expressly provides that all South Sound Satanists activities are subject to TST control and expressly incorporates the Affiliation Agreement. Matt Kezhaya's declaration comes with exhibits pertaining to the discovery obstruction referenced above.

Argument

Defendants cross-move on all claims. Their motion is founded on circular reasoning and wishful thinking, not binding or even persuasive authority. Their principal argument appears to be that an agency agreement does not control an agent's authority; or, if it does, then their own subjective beliefs are the yardstick for reasonableness. But written agreements *do* control an agent's actual authority, and "reasonableness" is ascertained by principles of law not obstinance.

To whatever extent Claypool's unauthorized statements could be used against TST in the first place, Defendants' equitable estoppel defense is precluded by the doctrine of unclean hands. It is ancient law that "he who seeks equity must do equity," and that equitable estoppel only protects the "innocent." Defendants did not "innocently" find themselves in possession of the Allies Page, they stole it on their way out. This theft induced Claypool's conflict-avoidant statements. They then went on to steal the Chapter page, then to wage a scorched-earth internet harassment campaign

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against TST and all its supporters, then publicly cry for funding to fuel a dilatory litigation strategy.

Defendants' waiver argument conspicuously avoids all law and reason. Claypool's alleged waiver, if any, of TST's rights is unsupported by any contract consideration. Under Washington law, that means the alleged waiver – if any – can be freely revoked. And freely revoke it, TST did. TST issued a federal complaint which opens with the statement: "TST is suing Defendants for misappropriating two of TST's Facebook business pages." Any reasonable person would have immediately understood this text to mean that Claypool's statements could not be relied upon. And to rule out Defendants' erroneous belief that conversion or trespass to chattels requires a formal demand, a formal demand followed. Whatever waiver may have occurred was revoked, and yet Defendants steadfastly held onto their stolen property.

Defendants also claim that this action was not timely brought within the three-year statute, but repetitiously acknowledge that the litigation has been ongoing for virtually as long as they have been in wrongful possession of TST's social media page. To square this circle, they point to a case which states that a "voluntary" dismissal does not toll the statute of limitations. But this case was brought in this Court because the federal court *involuntarily* dismissed the state-law claims. Defendants' own authority, and even Defendants' own attorney, acknowledges the binding case, yet Defendants' motion does not cite or distinguish it.

Next, Defendants complain that TST has no evidence of damages. The damages in this case is measured by the profits that Defendants derived from stealing the Allies Page, and by the fair market value of the Chapter Page for the time it was wrongfully detained. Proof of the former is solely within the possession of Defendants, and they refuse to meet their discovery obligations. For this reason, the Court should decline to consider their motion until after they have participated in discovery. As to the fair market value of the Chapter Page, that is a question for the jury.

Defendants close with a two-sentence argument that, if the Court adopts any of their equitable defenses, that requires granting their counterclaim. Defendants provide neither evidence nor argument to support their "thieves-keepers" claim. That is because there is none. Over 50 years

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ago, the Washington Supreme Court reaffirmed the "age-old principle" that affirmative defenses "cannot be used as a means for acquiring affirmative relief." *Pac. Nw. Bell Tel. Co. v. Dep't of Revenue*, 78 Wash. 2d 961, 967 (1971).

I. Legal standard

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Macias v. Saberhagen Holdings, Inc.*, 175 Wash. 2d 402, 408 (2012); CR 56(c). There is a "genuine dispute" is one upon which reasonable people may disagree. *Youker v. Douglas Cnty.*, 178 Wash. App. 793, 796 (2014). A "material fact" is one which controls the outcome of the litigation. *Id.* All facts and reasonable inferences are construed in the light most favorable to the nonmoving party. *Id.* On cross motions for summary judgment, the Court views the evidence in the light most favorable to the nonmoving party with respect to the particular claim. *West v. Washington Dep't of Fish & Wildlife*, 21 Wash. App. 2d 435, 441 (2022).

II. The state-law claims were involuntarily dismissed, which stopped the clock.

Defendants' first argument is that the statute of limitations bars this complaint. They reach this conclusion by misstating the procedural history. Contrary to their claims, the federal case was *involuntarily* dismissed, then this case was brought. *Compare* Dkt. 37 (Defendants' Motion) at pp. 2, 12, 16, and 17 (repetitiously claiming the state-law claims were voluntarily dismissed) *with* Dkt. 32 (Decl. Kezhaya) at 28-30 (involuntary dismissal); *id.* at 32 (judgment of dismissal, dated January 9, 2023); dkt. 1 (original complaint, dated April 5, 2023).

The law on this topic is well-settled: when state-law claims are brought alongside federal questions in federal court, the state of limitations period for all state-law claims is paused from the date of the original complaint. 28 USC § 1367(d); *Artis v. D.C.*, 583 U.S. 71, 84 (2018) ("the limitations clock stops the day the claim is filed in federal court and, 30 days postdismissal, restarts from the point at which it had stopped"). By First Amended Complaint, TST asserted tortious interference, conversion, and trespass to chattels. *Compare* Dkt. 38 (Decl. Roller) at 89-92; *United*

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1 *Fed'n of Churches, LLC v. Johnson*, 598 F. Supp. 3d 1084, 1099–101 (W.D. Wash. 2022) (denying
2 Defendants' motion to dismiss these claims). An amended complaint relates back to the original
3 complaint. FRCP 15(c). And the statutory text stops the clock for more than the pleaded claims in
4 the original complaint, it applies to "any other claim in the same action." 28 USC § 1367(d). The
5 federal case was dismissed without prejudice for an insufficient amount in controversy on January
6 9, 2023. Decl. Kezhaya at 28-32. Plaintiff re-commenced the litigation in this Court 87 days later,
7 on April 5, 2023. There were 21 days that passed between the theft of the Allies Page and the filing
8 of the federal lawsuit, plus 87 days between dismissal and the filing of this lawsuit, less 30 days
9 under Artis, which results in 78 days between the theft and the "commencement" of this litigation.
10 As 78 days is far fewer than the 1,095 days permitted by statute (1095 days = 3 years x 365 days
11 per year), the statute of limitations is no defense.

12 Defendants cite a slew of cases, but only one post-dates *Artis*. See Dkt. 37 (Defendants'
13 Motion) at 16-17; *Holt v. Cnty. of Orange*, 91 F.4th 1013 (9th Cir. 2024). In *Holt*, the Ninth
14 Circuit affirmed a District Court finding that "the tolling provision of 28 U.S.C. § 1367(d) applied
15 only to supplemental state-law claims dismissed in the circumstances specified in § 1367(c)."
16 *Holt*, 91 F.4th at 1018. That is the case presented here. As shown in the opinion supporting
17 involuntary dismissal, the District Court agreed with Defendants' argument that "With the
18 dismissal of Plaintiff's federal claims … there is no federal question jurisdiction and the
19 requirements for diversity jurisdiction have not been met." Dkt. 32 (Decl. Kezhaya) at 29; *accord.*
20 *Artis*, 583 U.S. at 74 ("When district courts dismiss all claims independently qualifying for the
21 exercise of federal jurisdiction, they ordinarily dismiss as well all related state claims") (citing
22 28 USC § 1367(c)(3)). Even *Holt* recognizes *Artis* as controlling on the issue at hand. *See Holt*,
23 91 F.4th at 1019 n. 1 ("The Supreme Court's leading cases interpreting § 1367(D) … [including]
24 *Artis v. District of Columbia*, 583 U.S. 71 … (2018), only *addressed the availability of tolling*
25
26

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for claims re-filed in state court." (emphasis added). At issue are claims re-filed in state court.[1]

It is of no moment that the Ninth Circuit later found error in the District Court's amount-in-controversy analysis. See Dkt. 38 (Decl. Roller) at 204 ¶ 3. The statutory text provides that the clock is stopped for all claims within the same case or controversy that are "dismissed at the same time as *or after* the dismissal of the [supplemental jurisdiction] claim." 28 USC § 1367(d) (emphasis added). The District Court dismissed the supplemental jurisdiction claims on January 9, 2023. Dkt. 32 (Decl. Kezhaya) at 28-32. The voluntary dismissal that Defendants rely upon was entered "*after*" that dismissal, on January 25, 2024. Dkt. 38 (Decl. Roller) at 211.

As recognized by the *Artis* Court, the stop-the-clock approach "is suited to the primary purpose of limitations statutes: 'preventing surprises' to defendants and 'barring a plaintiff who has slept on his rights.'" *Artis*, 583 U.S. at 91. But a limitations statute's purpose is belied where, as here, "the defendant will have notice of the plaintiff's claims within the state-prescribed limitations period." *Id.* In which case, "the plaintiff will not have slept on her rights" but rather would have "timely asserted those claims, endeavoring to pursue them in one litigation." *Id.*, at 91-92. At all times, the Defendants have had fair notice of the property rights asserted in this case. At all times, TST has endeavored to pursue its claims in one litigation. When Defendants complained about pursuing the state-law claims in this Court while simultaneously pursuing an appeal of the federal-law questions, TST agreed to a stay of these proceedings. When the federal case was remanded and TST didn't want to deal with protracted federal litigation, TST dropped the federal case and resumed this one. At all times, TST has done everything to maximize judicial economy.

Up until the motion for summary judgment, it appeared as if Defendants were on the same page. When demanding a stay of this case pending the federal appeal, Defendants' own attorney acknowledged the above binding authority and concluded, "TST is not at risk of losing its tortious

[1] There is also a replevin claim and breach of fiduciary duty claim, but both form the same "case or controversy" as the re-filed claims. 28 USC § 1367(a).

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interference claim on statute of limitations grounds for two and a half years." Decl. Kezhaya, at 51 (**Exhibit 9** at 6). But now that this authority is inconvenient to their narrative, Defendants ignore it and perform an about-face from their counsel's stated position, claiming that *all* of the claims, including tortious interference, are time-barred. Dkt. 37 (Defendants' Motion) at 14.

In summary, there is a tolling statute for all state-law claims brought in federal court which are part of the same "case or controversy" as federal-question claims. *See* 28 USC § 1367(d). When the federal-question claims are dismissed, the state-law claims are ordinarily dismissed as well. 28 USC § 1367(c)(3). That is what happened here. Dkt. 32 (Decl. Kezhaya) at 28-32. Law, reason, and policy all point to a singular conclusion: the time which plaintiff spent in federal court on the state-law claims is not counted toward the statute. *Artis*, *supra*. As calculated above, only 78 days have accrued toward the 1095-day statute of limitation.

III. The Affiliation Agreements and basic agency law provides TST ownership.

Next, Defendants claim that TST never owned the social media accounts which Sullivan admitted "we stole *from TST*." Dkt. 33 (Decl. Claypool) ¶ 5 (emphasis added).

Nathan Von Sullivan we have a meme page here that we stole from TST:
Evergreen Memes for Queer Satanic Fiends

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

Like · Reply · 8w 4

Defendants reach this conclusion by ignoring the Affiliation Agreements which clearly designate all social media accounts as property of TST. *See* Decl. Chambliss, Exhibit 1, Decl. Sanguine, Exhibit 2, and Decl. Claypool, Exhibit 4, all at § 3(b), (c), § 4(c), (d), and § 6(a). Defendants evade the Affiliation Agreements by complaining that TST didn't have an affiliation agreement with the Washington Chapter's LLC at the time of the theft. Dkt. 37 (Defendants' Motion) at 21. But both the Chapter Page and the Allies Page were created before the Washington Chapter organized its LLC. The Chapter Page was created in 2014 under the direction of Lilith

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1 Starr. Dkt. 41 (Decl. Sullivan) ¶ 3. The Allies Page was created in September 2018, also under
2 the direction of Chapterhead Lilith Starr. Dkt. 34 (Decl. Chambliss) ¶ 5. The Washington
3 Chapter's LLC was not organized until February 2020. Dkt. 41 (Decl. Sullivan), Exhibit 1.
4 Defendants provide neither argument nor convincing authority to support the notion that the
5 Washington Chapter's organization somehow deprived TST of its property rights which accrued
6 beforehand.

7 The simple fact of this case is that both the Allies Page and the Chapter Page were formed
8 in the course and scope of an agency. It is basic agency law that property rights created in the
9 course and scope of agency are the property of the principal. *Restatement (Second) of Agency* §
10 398 (1958) ("an agent receiving or holding things on behalf of the principal is subject to a duty
11 to the principal not to receive or deal with them so that they will appear to be his own"). Not the
12 agent, and certainly not the agent's later-created LLC. *Id.*, cmt. *d* ("If the agent improperly
13 acquires property in his own name or improperly deposits money in his own name, he is liable
14 to the principal for any loss thereby caused.") This is the general rule, and it is expressly
15 incorporated in the Affiliation Agreements.

16 Defendants also question the validity of the Affiliation Agreements because TST did not
17 sign where indicated. Dkt. 37 (Defendants' Motion) at 21. The question is not execution but
18 mutual assent, and mutual assent is deduced by the parties' conduct. *Hoglund v. Meeks*, 139
19 Wash. App. 854, 870–71 (2007). TST accepted the Affiliation Agreements by overseeing the
20 Affiliates' activities. See Dkt. 33 (Decl. Claypool), Exhibit 5. Defendants' own argument belies
21 their nitpicking. They contend that Claypool's statements and Sanguine's failure to interject can
22 both be attributed to TST, in which Claypool references the "TST guidelines that we are beholden
23 to." Dkt. 37 (Defendants' Motion) at 8. They can't have it both ways: either Claypool and
24 Sanguine were agents of TST, but with no authority to convey TST's property as provided in the
25 Affiliate Agreements, or they were *not* agents of TST and nothing they said binds TST anyway.

26 Likewise, Defendants question the validity of contracts entered into with a pseudonymous

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party. Dkt. 37 (Defendants' Motion) at 21. "The essential elements of a valid executory contract are competent parties, legal subject matter, and valuable consideration." *Wise v. City of Chelan*, 133 Wash. App. 167, 173 (2006). Defendants offer neither evidence nor convincing argument that the use of a pseudonym somehow undermines a party's competence to contract.

This same argument disposes of Defendants' paltry effort to avoid tortious interference liability and avoid their breach of fiduciary duty liability. *See* Dkt. 37 (Defendants' Motion) at 19-20. At all times, TST's agents operated TST's social media pages "as" and "for" TST. *Restatement (Second) of Agency* § 398 (1958). The relationship with Facebook, which formed the possessory right to Facebook's computer servers and which manifested as the social media pages, were therefore "with" TST. And TST's agents particularly included each of the Defendants. *See* Decl. Claypool, **Exhibit 4** (South Sound Satanists Operational Guide) at 2 § II(D)(3) (incorporating the "OVERSIGHT BY TST" terms from the Affiliation Agreement) and id. at 3 § III(F) ("SSS must comply with all directives given by the National Council"). Their fiduciary duties were not limited to the Washington Chapter; they were owed to the ultimate principal: TST. *Restatement (Second) of Agency* § 428(1) (1958) ("a subagent who knows of the existence of the ultimate principal owes the duties owed by an agent to a principal"). Defendants unquestionably had subjective awareness of TST's status as the ultimate principal because they admitted that their roles were to "help with *TST's* social media" and "to manage *TST's* social media." Answer ¶ 16 (emphasis added).

In summary, TST owned the social media pages at issue because the Affiliation Agreements and basic agency principles both provide that all beneficial property rights under the agency go to the principal. The Affiliation Agreements are not undermined by the absence of a TST signature because acceptance was manifested by assent. The business relationship with Facebook was "with" TST because TST's agents operated TST's social media pages "for" TST. The Defendants' fiduciary duties were not limited to the Washington Chapter because they were aware that their ultimate principal was TST.

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IV. Claypool's statements do not bind TST because they were unauthorized.

Next, Defendants claim that TST is equitably estopped from this action because its agent stated they could use it "free and clear," albeit without authority. Dkt. 37 (Defendants' Motion) at 23-24. Defendants do not assert that Claypool had actual authority to convey the Allies Page or waive any claims for its theft. *See id.* They cursorily claim that the Washington Chapter's LLC conveyed the Allies Page. *Id.* at 22-23. But, again, the Washington Chapter's LLC was not organized until after the Allies Page was created. Defendants offer neither evidence nor authority that TST ever conveyed the Allies Page to the Washington Chapter's LLC, or that the post-hoc organization of the Washington Chapter's LLC otherwise deprived TST of its property rights under the Affiliation Agreements and basic agency law.

The operative question is whether Claypool had the authority to convey the Allies Page or waive the claim. He did not. Dkt. 33 (Decl. Claypool) at Exhibit 4, § 6(a)(1) (Claypool acquired no ownership rights to the Allies Page) and § 6(a)(2) (Claypool agreed he shall not "directly or indirectly[] contest or aid others in contesting TST's ownership" of the Allies Page). Under binding Washington law: "Actions that exceed the decision maker's authority are generally void." *Bilanko v. Barclay Ct. Owners Ass'n*, 185 Wash. 2d 443, 450 (2016); *see also Manger v. Davis*, 619 P.2d 687, 693 (Utah 1980) (security interest invalid because it was predicated on an unauthorized pledge). Unquestionably, Claypool lacked authority to convey TST's social media page or waive TST's claim for the theft.

Defendants instead contend that Claypool had *apparent* authority to convey the Allies Page or waive the claim. Dkt. 37 (Defendants' Motion) at 23-24. Their cited cases do not substantiate their argument. Their cases only sustain the general point that Claypool had apparent authority to do with the Allies Page that which is "generally recognized" or to do that which is "ordinarily entrusted to one occupying such a position." *See King v. Riveland*, 125 Wash.2d 500, 507-08 (1994) (quoting from *Restatement (Second) of Agency* § 27 cmt. *a* (1958). But their supporting evidence reveals that in Claypool's role as Media Liaison, he was: "responsible for

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the public image of [the Washington Chapter] and, by extension, the image of TST in that area." Dkt. 38 (Decl. Roller) at 10. No part of public relations entails the right to convey property or waive legal claims. Quite the contrary: "The authorized possession of a chattel by the agent does not of itself create apparent authority for him to sell or otherwise deal with it." *Restatement (Second) of Agency* § 49, cmt. *d* (1958). To draw an analogy, consider a restaurant manager who is authorized to decorate a chalkboard which advertises that day's specials, subject to the owner's control. The restaurant manager appoints a trusted employee to decorate the chalkboard, subject to the manager's control. The trusted employee steals the chalkboard. The manager cannot waive the owner's claim for the theft. *Id.*

Moreover, Defendants offer nothing to overcome that they did not "actually, *i.e.*, subjectively" believe that Claypool had authority to give away the Allies Page or waive its claim. *See Smith v. Hansen, Hansen & Johnson, Inc.*, 63 Wash. App. 355, 363 (1991). As repeatedly

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noted, Sullivan contemporaneously bragged that they "stole" the Allies Page "from TST." Dkt. 33 (Decl. Claypool) ¶ 5.

Nathan Von Sullivan we have a meme page here that we stole from TST:
Evergreen Memes for Queer Satanic Fiends

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

Like · Reply · 8w 4

Rather than overcome his contemporaneous admission, Sullivan avers under penalty of perjury that this was mere internet sarcasm. But the standard of review requires discounting that claim for the transparent lie that it is. *See West v. Washington Dep't of Fish & Wildlife*, 21 Wash. App. 2d 435, 441 (2022) (evidence is to be viewed in the light most favorable to the non-movant); Wash. R. Ev. 801(d)(2)(i) and (v) (the statement is admissible against Sullivan, as his own statement, and as against his coconspirators, as it was made in furtherance of the conspiracy); see

1 also Decl. Claypool ¶ 3 (Sullivan's claim is an obvious lie); Decl. Chambliss at 1-2 ¶ 2 (same,
2 and expanding that the referenced "social club" for "a small group of regional satanists," which
3 headed by Defendants, describes itself as a "religious organization" and propounds Satanic ritual
4 guides); see also id. at 5-21 (two Satanic ritual guides propounded by Defendants).

5 More to the point, Defendants' claim to have only 'sarcastically' admitted to the theft is
6 not a trump card because the law further requires that the purported subjective belief be
7 *reasonable*. *Smith*, 63 Wash. App. at 364. Precisely one week after Claypool's unauthorized
8 statement, Johnson stole the Chapter Page. Dkt. 37 (Decl. Johnson) ¶ 24. Claypool did not purport
9 to give away the Chapter Page. Id. ¶ 16. Two weeks after Johnson stole the Chapter Page, the
10 federal complaint was brought. Dkt. 32 (Decl. Kezhaya) at 5. That complaint explicitly takes
11 issue with the misappropriation of both pages. *Id.* at 5 ¶ 1. And it explicitly demands the
12 "immediate return … [of] The Chapter Facebook page [and] The Allies Facebook page." *Id.* at
13 20 ¶ *ad damnum* (1)(a) and (b). Then, in the wake of Defendants' meritless claim that the true
14 owner must ask for their property back before they can bring suit, a formal demand followed. *Id.*
15 at 24; *see also United Fed'n of Churches, LLC v. Johnson*, 598 F. Supp. 3d 1084, 1101 (W.D.
16 Wash. 2022) (rejecting Defendants' defense). Each of these three facts, standing alone and
17 collectively, would have disabused any reasonable person from the belief that Claypool had
18 conveyed rightful possession of the Allies Page.

19 **V. TST revoked any waiver by pursuing its claims and issuing a formal demand.**

20 Defendants retort that they reasonably held onto Claypool's statements despite the lawsuit
21 and formal demand because the Washington Chapter was "autonomous." Dkt. 37 (Defendants'
22 Motion) at 24. The Washington Chapter was *not* "autonomous." Its only autonomy was in having
23 regular meetings; "any outside-facing Chapter events or activities had to be *pre-authorized* by
24 National Council." Decl. Kezhaya, at 58 (**Exhibit 10**, Response to Interrogatory 7) (emphasis
25 added); see also Dkt. 38 (Decl. Roller) at 15 (All chapters "agree to certain standards and accept
26 specific responsibilities … *and accept direction from*, both the International Council (IC) and

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Executive Ministry (EM)") (emphasis added). Everything else, particularly to include the operation of the Allies Page, is subject to TST's control. *Ibid.*; *see also* Dkt. 34 at Exhibit 1, Dkt. 35 at Exhibit 2, and Dkt. 33 at Exhibit 4 (the Affiliation Agreements) § 3(b) (all promotional material must be submitted to TST for its prior approval, including "social media"); § 3(c) ("Content must comply with the standards … of TST").

Even if Claypool's unauthorized statements could bind TST, the purported waiver was unsupported by contract consideration and was therefore revocable. *Cornerstone Equip. Leasing, Inc. v. MacLeod*, 159 Wash. App. 899, 909 (2011). TST revoked any waiver by filing the federal complaint, which could have prompted Defendants to return the same within the 21-day answer time. TST revoked any waiver by issuing the formal demand, which could have prompted Defendants to return the property at any point within the last 25 months. And TST revoked any waiver by issuing the complaint in this case, as amended, alongside the petition for replevin. Defendants are not returning the property, not because they have any reasonable belief that TST conveyed the Allies Page to them or waived the claim, but because they want to retain the stolen property.

VI. Defendants have unclean hands.

Next, Defendants argue that even if Claypool did not have actual or apparent authority to convey the Allies Page or waive the theft claims, TST is otherwise equitably estopped from its claims pertaining to the Allies Page. Dkt. 37 (Defendants' Motion) 24-25. There are two problems.

First, the argument is internally inconsistent. If Claypool lacked authority to convey the Allies Page or waive claims arising from its theft, then Defendants could not have "reasonably" relied on his statements as required by the second element of equitable estoppel. The Court can easily disregard the equitable estoppel argument by noticing that: "The authorized possession of a chattel by the agent does not of itself create apparent authority for him to sell or otherwise deal with it." *Restatement (Second) of Agency* § 49, cmt. *d* (1958). Likewise, Defendants' argument

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all throughout their brief has been that the Washington Chapter is separate from TST and is unbound by any affiliation agreements, yet they now argue that TST is bound by statements made in the course of the Washington Chapter LLC's operations. They can't have it both ways: either Claypool is TST's agent and his authority is therefore constrained by the Affiliation Agreement, or the Washington Chapter is separate from TST and TST is therefore not bound by its statements.[2]

Second, Defendants are barred from seeking this equitable relief because they have unclean hands. "A party may not base a claim of estoppel on conduct, omissions, or representations induced by his or her own conduct, concealment, or representations." *Kramarevcky v. Dep't of Soc. & Health Servs.*, 122 Wash. 2d 738, 743 n. 1 (1993). For Defendants' equitable estoppel argument to have legs, Claypool would have had to tell Defendants that they could have the Allies Page *before* they took it. His conflict-avoidant reaction was induced by Defendants' theft of the Allies Page, they did not rely on this alleged conveyance in good faith.

Alternatively, they could have *only* taken the Allies Page. "The doctrine of estoppel is for the protection of innocent persons, and only the innocent may invoke it." *Mut. of Enumclaw Ins. Co. v. Cox*, 110 Wash. 2d 643, 651 (1988) (quoting *31 C.J.S. Estoppel* § 75 (1964)). When Defendants went on to steal the Chapter Page one week after Claypool's purported conveyance, they went beyond the purported gift. They did not rely on Claypool's unauthorized statement when resolving to hold onto their stolen property, they were going to retain it no matter what he said. And, far from innocent parties, Defendants publicly goaded TST into this litigation. *See* Dkt. 33 (Decl. Claypool) ¶ 5 ("we have a meme page here that we stole from TST"); Dkt. 38 (Decl. Roller) at 54-55 ("I think I gave them long enough … I bet they'll try to get in touch with

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[2] The Washington Chapter's LLC is irrelevant. The Allies Page was created before that LLC was organized under authority granted by the Affiliation Agreement of Lilith Starr. Tarkus Claypool had management authority over the Allies Page, but his authority is defined by and constrained by his Affiliation Agreement.

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me now”). Under no system of justice do Defendants get the benefit of picking a fight while simultaneously crying about the natural consequence of their actions.

Alternatively, the Court should decline to rule on Defendants’ motion until after Defendants comply with their discovery obligations. See CR 56(f); Decl. Kezhaya, at 2-3 ¶ 3. It is believed that Defendants have made communications to third parties and to a reporter that they knew that, even after Claypool’s unauthorized statement, TST did not authorize Defendants to retain the Allies Page. Those communications have been promised but have not yet been produced. Decl. Kezhaya at 23-30 (Exhibit 5, Responses to Request for Production Nos. 11, 14, 20, 21, 22). The recording has been subpoenaed but refused and will therefore require further motions practice. Id. at 34-37 (subpoena for the recording); id. at 38-40 (objection to subpoena); id. at 41-45 (response to objection). Because of this discovery obstruction, the Court should decline to rule on Defendants’ motion. CR 56(f).

VII. Defendants alone have the proof of damages for their tortious interference.

Next, Defendants claim that TST incurred no damages from their tortious interference. Dkt. 37 (Defendants’ Motion) at 25-26. To preface, one must understand the nature of the wrong Defendants committed. The tortious interference at issue is the intentional deprivation of TST’s public image in Washington with regard to the most ubiquitous social media platform yet

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developed–both the Allies Page and the Chapter Page. Drawing analogy to an individual, it is as if Defendants took TST’s face.[3] There are three problems with Defendants’ motion.

First, contrary to their claim that TST was unable to articulate a model for damages in the

[3] “Good name in man and woman, dear my lord,
Is the immediate jewel of their souls.
Who steals my purse steals trash;
‘Tis something, nothing;
‘Twas mine, ‘tis his, and has been slave to thousands;
But he that filches from me my good name
Robs me of that which not enriches him,
And makes me poor indeed.” William Shakespeare, *Othello* Act III, scene 3

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1 course of discovery in this case, undersigned counsel articulated damages as the sum of: (1) the
2 wrongful profits traceable to the Allies Page; and (2) at least the fair market value of the Chapter
3 Page for the two months Defendants unlawfully detained it. Decl. Kezhaya, at 2-3 ¶ 3; *see also*
4 *Restatement (Second) of Agency* § 402(1)(b) and (c) (1958) ("An agent is subject to liability to the
5 principal for the value of a chattel … which he holds for the principal … together with interest
6 thereon if the amount is liquidated, or damages, if the agent … (b) uses it for his own purposes under
7 an adverse claim [or] (c) unreasonably refuses to surrender it on demand"); *See Restatement*
8 *(Second) of Torts* § 927, cmt. *f* and *j* (1979); *id.* § 931, cmt. *A* (an agent is liable to the principal for
9 profiting from the subject matter of the agency); *Matsyuk v. State Farm Fire & Cas. Co.*, 173 Wash.
10 2d 643, 657 (2012) (the collateral source rule prohibits Defendants from mitigating their liability
11 due to the recovery of the page by Facebook, a third party); *cf. Owens v. Layton*, 133 Wash. 346,
12 347 (1925) (the measure of damages for property wrongfully detained is its fair market rental value).
13 There is also the punitive damages claim. Am. Compl. at 15, *ad damnum* (3). Massachusetts
14 law provides for punitive damages and controls the question of damages because: (1)
15 Massachusetts has the greater interest in providing TST a remedy as TST is headquartered there;
16 (2) Washington has no interest in the matter because tort law is designed to remedy a wronged
17 plaintiff, not protect the tortfeasor; (3) Massachusetts is among the consensus of the several States
18 in its willingness to award punitive damages; (4) Defendants have no justified expectation in
19 avoiding the natural consequences of their actions; and (5) Massachusetts has the better rationale
20 because it best furthers the irreducible purpose of the civil courts to provide a remedy for private
21 wrongs. *See Williams v. Leone & Keeble, Inc.*, 170 Wash. App. 696, 705 (2012); *Restatement*
22 *(Second) of Conflict of Laws* § 6(2)(a)-(g) (1971).
23 *Second*, the quantum of damages is determinable only upon discovery into Defendants'
24 books and records. Defendants have been using the Allies Page to advertise their competing online
25 merchandise store. *See* Decl. Chambliss, at 2-3 ¶ 3; id. at 23-55. When an agent unlawfully detains
26 the profits from the subject matter of their agency, the agent owes those profits to the principal.

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Restatement (Second) of Torts § 927, cmt. *f* and *j*; § 931, cmt. *a* (1979); *Straka Trucking, Inc. v. Est. of Peterson*, 98 Wash. App. 209, 211 (1999) (applying § 927). Likewise, Defendants' temporary theft of the Chapter Page is analogous to an unlawful detainer, which entitles TST to the fair market rental value of TST's social media page. *Cf. Sprincin King St. Partners v. Sound Conditioning Club, Inc.*, 84 Wash. App. 56, 63 (1996) ("The measure of 'damages' for unlawful detainer is based on the fair market value of the use of the premises.") Both sets of damages require an inspection of Defendants' books and records: the quantum of their profits from misappropriating the Allies Page are damages owed to TST, and the fair market value of the Chapter Page is ascertainable only from their profits for the time they took it. But Defendants refused to provide any discovery into their books and records. *See* Decl. Kezhaya, at 17-20 (Exhibit 5, responses to Interrogatories Nos. 8-12). Therefore, the Court should decline to rule on their motion until they meet their discovery obligations. *Id.*; CR 56(f).

Third, nominal damages are permissible for tortious interference. *Sunland Invs., Inc. v. Graham*, 54 Wash. App. 361 (1989) (affirming nominal-only damages for a tortious interference).

VIII. Defendants' defenses give no basis for affirmative relief.

Last, Defendants offer a two-sentence circular claim that if the Court agrees with any of their affirmative defenses then the Court must afford affirmative relief that they are the rightful owners of their stolen property. Dkt. 37 (Defendants' Motion) at 26. Defendants neglect to consider the ancient law, reaffirmed more than 50 years ago, that an affirmative defense is no basis for affirmative relief. *Pac. Nw. Bell Tel. Co. v. Dep't of Revenue*, 78 Wash. 2d 961, 967 (1971) ("We also reaffirm the age-old principle that the bar of the statute of limitations … *cannot* be used as a means for acquiring affirmative relief") (emphasis added); *Motley-Motley, Inc. v. State*, 127 Wash. App. 62, 73 (2005) ("Equitable estoppel is available only as a shield, or defense; *it is not available as a sword, or cause of action*") (emphasis added).

Conclusion

WHEREFORE the Court should deny Defendants' motion in full, or should decline to rule

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on it until after Defendants comply with their discovery obligations and permit inspection into their books and records.

Respectfully submitted this 9th day of September, 2024.

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Certificate of compliance

I certify that the foregoing contains **8102** words, in compliance with the Local Civil Rules.

CERTIFICATE OF SERVICE

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

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

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