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District Court
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for the Northern Mariana Islands
By _____
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

MANUEL ALVAREZ,
Plaintiff/Counterclaim-Defendant,
vs.
SEAHORSE INC. AND SHAO WALKER,
Defendants/Counterclaim-Plaintiffs.

Case No.: 16-cv-00014

DECISION AND ORDER GRANTING IN
PART AND DENYING IN PART
PLAINTIFF/COUNTERCLAIM-
DEFENDANT'S MOTION TO DISMISS
COUNTERCLAIMS

Before the Court is counterclaim-defendant Manuel Alvarez's motion to dismiss the counterclaims. (ECF No. 8.) For the reasons set forth below, the motion is granted in part and denied in part.

I. BACKGROUND

Plaintiff/counterclaim-defendant Manuel Alvarez ("Alvarez") filed this FLSA suit against defendants/counterclaim-plaintiffs Seahorse, Inc. ("Seahorse") and Shao Walker ("Walker") pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), also bringing several claims under the laws of the Commonwealth of the Northern Mariana Islands pursuant to 28 U.S.C. § 1367 (supplemental jurisdiction).

Alvarez is a resident of Saipan, and alleges he was an employee of Seahorse from 2005 to 2016. (Compl. ¶ 9, ECF No. 1.) Defendants admit that Alvarez was a shareholder at the time that Seahorse was incorporated, and that he was also a corporate officer (Vice-President) of Seahorse

1 from February 2005 to January 2016, but deny that he was an employee. (Answer ¶¶ 9, 14, ECF
2 No. 5.)

3 Seahorse is a business engaged in tourism and marine sports in Saipan. (Compl. ¶¶ 6-7.)
4 Walker cofounded Seahorse with plaintiff, and is the current owner of the corporation. (See
5 Compl. ¶¶ 5, 7; Answer ¶¶ 7, 14.)

7 **Procedural Background**

8 Plaintiff filed a complaint on June 1, 2016, alleging that defendants violated the Fair Labor
9 Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.*, the CNMI Wage and Hour Act, and are liable
10 for breach of contract, and conversion. (Compl., ECF No. 1.)

11 Defendants were served with summons on June 2, 2016. (Summons, ECF Nos. 2, 3.)

12 On June 24, 2016, plaintiff filed a motion for entry of default for failure to file an answer
13 or respond to the complaint. (Pl’s. Mot. for Default J., ECF No. 4.) That same day, defendants
14 filed an answer with affirmative defenses and seven counterclaims. (Answer and Countercls., ECF
15 No. 5.) On September 8, 2016, defendants filed a brief in opposition to the motion for entry of
16 default, and a cross-motion to dismiss the complaint. (Defs’. Cross-Mot. to Dismiss, ECF No. 14.)

17 On August 11, 2016, plaintiff filed a motion to dismiss the counterclaims. (Pl’s. Mot. to
18 Dismiss Countercls., ECF No. 8.) On August 25, 2016, defendants filed a motion for an extension
19 of time to file their brief in opposition to the motion to dismiss the counterclaims, requesting one
20 additional hour of time on that same day to file. (Defs’. Mot. for Extension of Time, ECF No. 11.)

21 The brief in opposition was filed approximately two hours later on August 26, 2016. (Defs’. Br.
22 in Opp’n, ECF No. 12.) Plaintiff filed a reply brief on September 1, 2016. (Pl’s. Reply Br., ECF
23 No. 13.)

1 On September 8, 2016, the Court heard oral argument on the motion for entry of default,
2 motion for an extension of time, and motion to dismiss the counterclaims. (Mins., ECF No. 15.)
3 At the hearing, plaintiff’s counsel moved to withdraw the motion for entry of default, and the Court
4 granted the motion. (*See id.* at 1.) The Court also granted the motion for an extension of time to
5 file the brief in opposition, and accepted the brief for consideration on the merits. (*Id.*) Counsel
6 for defendants agreed not to pursue the cross-motion to dismiss the complaint.¹ The Court
7 thereafter took the motion to dismiss the counterclaims under advisement. (*Id.* at 1-2.)
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9 **Facts As Alleged in the Complaint**

10 The following background is drawn from the complaint, taking the well-pleaded
11 allegations as true, as required at the motion to dismiss stage.
12

13 In 2005, plaintiff and defendant Walker cofounded Seahorse. At this time, they agreed that
14 plaintiff would receive fifty percent of the shares of the corporation after ten years, and in the
15 interim, plaintiff would be an employee of Seahorse, working at least twelve hours per day, six
16 days per week, and six hours on Sundays. (Compl. ¶¶ 5, 8, 9, 14.)
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18 Between 2005 and 2014, as an employee, the parties agreed that plaintiff would receive
19 thirty-five dollars per day, with twenty-five dollars paid out and ten dollars withheld for
20 “exigencies such as medical travel or other unexpected expenses.” (Compl. ¶ 15.) Despite this
21 agreement, plaintiff did not receive the twenty-five dollars each week. (*Id.* ¶ 16.) In the final year
22 of his employment, 2015, plaintiff received four hundred dollars per week, and occasionally
23 received an additional two hundred dollars for work performed for Saipan Aqua World and
24 Kuraling Dive, two entities affiliated with defendant Walker. (*Id.* ¶¶ 17, 18.)
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28 ¹ For clarity of the record, because defendants informed the Court on September 8, 2016, that they would not be
pursuing dismissal of the complaint based on lack of personal jurisdiction, the motion (ECF No. 14) is denied as moot.

1 During this period, plaintiff also performed work for Regel Corporation, the Iron Horse
2 Machine Shop, and the Low Tide Beach Bar & Grill, all of which are alter-egos of Walker.
3 (Compl. ¶ 33.) In exchange for his work, plaintiff was to become an equal partner in these
4 businesses. However, he was not compensated or made partner, and these businesses, which are
5 not named parties in this action, “converted numerous items of property belonging to [plaintiff].”
6 (*Id.* ¶¶ 33-38.)

8 In February 2015, plaintiff demanded that Walker transfer the agreed-on fifty percent of
9 shares in Seahorse to him, and she refused. Additionally, in late 2015, plaintiff fell ill and
10 requested some of the withheld funds for his medical use, but defendants refused. Plaintiff traveled
11 to the Philippines to obtain medical treatment, and upon his return, discovered that defendant
12 Walker had “changed the locks on [his] living quarters and personal office.” (Compl. ¶¶ 23-31.)

14 After these events transpired, plaintiff filed a complaint against defendants, alleging six
15 causes of action: (1) Payment below minimum wage in violation of the FLSA; (2) Unpaid
16 overtime in violation of the FLSA; (3) Retaliation in violation of the FLSA; (4) Violation of CNMI
17 Wage and Hour Act; (5) Breaches of contract; and (6) Conversion. (Compl. ¶¶ 41-58.)

19 **Facts As Alleged in the Answer and Counterclaims**

20 The following background is drawn from the answer, taking the well-pleaded allegations
21 as true for purposes of the motion to dismiss the counterclaims.

22 In February 2005, defendant Walker invested \$30,000 in Seahorse in exchange for thirty
23 percent of the shares in the corporation, and plaintiff retained the remaining seventy percent of
24 shares. Walker was named President and plaintiff was named Vice-President, a title he retained
25 until 2016. (Countercls. ¶ 19.) At no time was plaintiff an employee of Seahorse, as evidenced
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1 by his 2009 bankruptcy filings, which stated he was a “self-employed handyman,” and had no
2 shares or interests in any businesses, including Seahorse. (Countercls. ¶¶ 25-41.)

3 Following the initial investment in Seahorse in 2005, Walker began paying one of
4 plaintiff’s personal debts and, between 2006 and 2007, gave plaintiff a personal loan of \$5,000.
5 (Countercls. ¶¶ 22-23.) On February 12, 2007, Alvarez transferred fifty percent of the total shares
6 in Seahorse to Walker, and he retained a twenty percent stake in the corporation. (*Id.* ¶ 24.)
7 Around March 2007, Walker contributed an additional \$37,000 to Seahorse for the purchase of
8 equipment, including five jet skis, and for operating capital. In exchange, plaintiff transferred his
9 remaining shares to Walker. (Countercls. ¶¶ 19-21.)

10 While plaintiff served as Vice-President of Seahorse, Seahorse provided him with a number
11 of financial benefits at his request or demand. (*See* Countercls. ¶ 48.) Despite these benefits,
12 beginning in August 2014, plaintiff “became increasingly belligerent in his demands for money
13 from the defendant Seahorse,” and, after being refused additional stipend funds, threatened to
14 report illegal activity related to the hiring of foreign workers, attempted to prevent employees from
15 working, and harassed customers by photographing them and calling them illegal workers. (*Id.* ¶¶
16 49-55.)

17 Following these incidents, plaintiff sent a demand letter to Walker and Seahorse for \$5,000
18 and fifty percent of the shares in Seahorse. (Countercls. ¶¶ 56-57.) Seahorse refused, stating he
19 was not entitled to any shares because he transferred his ownership interest in 2007, that Seahorse
20 had already paid for his ticket to the Philippines for medical care and paid for his medical
21 insurance, and also offered to give him a cash loan, which Alvarez refused. (*Id.* ¶¶ 58-60.)

22 In 2015, plaintiff registered equipment owned by Seahorse, including eight jet skis and five
23 boats, under his name. (Countercls. ¶ 65; Ex. I, ECF No. 5-9.) Further, plaintiff registered a
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1 Toyota vehicle in his name despite the fact that it was owned by Walker. (Countercls. ¶ 65; Ex. J.
2 ECF No. 5-10.) After this, in January 2016, plaintiff was removed as Vice-President by corporate
3 board resolution. (Countercls. ¶ 64.)

4
5 Based on plaintiff's actions, defendants have brought seven counterclaims against him: (1)
6 Unjust enrichment; (2) Abuse of Process; (3) Breach of Fiduciary Duty; (4) Tortious Interference
7 with Contract; (5) Intentional Interference with Prospective Economic Advantage; (6) Conversion;
8 and (7) Declaratory Judgment. (Countercls. ¶¶ 66-127.)

9 **II. STANDARD OF REVIEW**

10 To survive a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure,
11 a pleading "must contain sufficient factual matter, accepted as true, to state a claim for relief that
12 is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atlantic Corp. v.*
13 *Twombly*, 550 U.S. 544, 555-56 (2007). In other words, the pleading must contain "more than
14 labels and conclusions"; the "[f]actual allegations must be enough to raise a right to relief above a
15 speculative level." *Eclectic Props. East, LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 995 (9th
16 Cir. 2014) (quoting *Twombly*, 550 U.S. at 555). Thus, a court must "identify pleadings that,
17 because they are no more than conclusions, are not entitled to the assumption of truth," and then
18 consider whether the well-pleaded allegations could "plausibly give rise to an entitlement to
19 relief." *Id.* (quoting *Iqbal*, 556 U.S. at 678-79). If the well-pleaded allegations "are merely
20 consistent with a defendant's liability," the plausibility threshold has not been satisfied. *Id.*
21 (quoting *Iqbal*, 556 U.S. at 678.) But "[a] claim has facial plausibility when the plaintiff pleads
22 factual content that allows the court to draw the reasonable inference that the defendant is liable
23 for the misconduct alleged." *Iqbal*, 556 U.S. at 678.
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1 **III. ANALYSIS**

2 Alvarez argues that Walker and Seahorse have failed to state a claim under Fed. R. Civ. P.
3 12(b)(6), and also argues that Walker lacks standing to assert five of the counterclaims. (Pl’s. Mot.
4 to Dismiss Countercls. 2.)

5 **A. Whether Walker Has Standing to Assert Counterclaims**

6 Alvarez argues that Walker lacks standing to bring counterclaims for unjust enrichment,
7 breach of fiduciary duty, tortious interference with contract, interference with prospective
8 economic advantage, and conversion. (Pl’s. Mot. to Dismiss Countercls. 2.) Seahorse and Walker
9 concur with this argument, except that they argue Walker has standing to bring a conversion
10 counterclaim as to the Toyota Tacoma because she owns the vehicle that Alvarez allegedly
11 continues to use without permission. (Defs’ Br. in Opp’n 1-2, 10.) No party addresses whether
12 Walker has standing to bring the declaratory judgment counterclaim.
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15 Because the parties concur that Walker may not bring counterclaims for unjust enrichment,
16 breach of fiduciary duty, tortious interference with contract, and interference with prospective
17 economic advantage, the Court grants Alvarez’s motion to dismiss the unjust enrichment, breach
18 of fiduciary duty, tortious interference with contract, interference with prospective economic
19 advantage, and conversion (as to Seahorse’s property) counterclaims as to Walker. The following
20 merits analysis of these counterclaims will be restricted to Seahorse.
21

22 Walker has standing to bring a claim for conversion of the Toyota Tacoma, for the reasons
23 set forth below in section G. Because none of the parties address the counterclaim for a declaratory
24 judgment, and because the counterclaim for a declaratory judgment lacks merit, as set forth in
25 section H below, it is unnecessary for the Court to address whether Walker has standing to assert
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1 this counterclaim. Accordingly, the substantive analysis of whether Seahorse and Walker have
2 stated a claim for the second, sixth, and seventh causes of action will proceed as to both defendants.

3 **B. First Cause of Action: Unjust Enrichment**

4 Alvarez argues that Seahorse’s unjust enrichment counterclaim should be dismissed
5 because Seahorse has failed to satisfy all of the elements of unjust enrichment. (Pl’s. Mot. to
6 Dismiss Countercls. 3.) Seahorse contends that this argument lacks merit. (Defs.’ Br. in Opp’n
7 2.)

8
9 A cause of action for unjust enrichment requires proof of the following elements: “(1) the
10 defendant was enriched; (2) the enrichment came at the plaintiff’s expense; and (3) equity and
11 good conscience militate against permitting the defendant to retain what the plaintiff seeks to
12 recover.” *Saipan Air, Inc. v. Stukes*, Case No. 12-cv-00015, 2014 WL 6978488, *15 (D. N. Mar.
13 I. 2014) (citing *Syed v. Mobil Oil Mar. I, Inc.*, Case No. 2011-SCC-0010-CIV, 2012 MP 20, ¶ 41
14 (N. Mar. I. 2012)); *see also* RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT §
15 1 (2011) (“A person who is unjustly enriched at the expense of another is subject to liability in
16 restitution.”).

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18 Alvarez first argues that he was not enriched because some of the items Seahorse listed as
19 benefitting Alvarez are actually benefits to third parties, and there must be a “direct line” between
20 the plaintiff and defendant, citing *Saipan Air*, 2014 WL 6978488, at *15. (Pl’s. Mot. to Dismiss
21 Countercls. 3; Pl’s. Reply Br. 2-3.) Seahorse argues that there was a “direct line” because most of
22 the benefits “were conferred directly on the plaintiff himself.” (Defs.’ Br. in Opp’n 2.) In fact,
23 according to Seahorse, the benefits were “provided to the *plaintiff* at his request/demand,” and all
24 of the money involved were “monies given *directly* to the plaintiff that the[*sic*] then used to pay
25 for the specific items listed therein.” (*Id.* at 4 (emphasis in original).)
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1 The Commonwealth “does not expressly require the benefit to have been directly conferred
2 on the defendant,” but “Commonwealth case law suggests that a direct line for the benefit from
3 the plaintiff to the defendant is needed.” *Saipan Air*, 2014 WL 6978488, at *15. At a minimum,
4 plaintiff “must show that the defendant “received the disputed funds.” *Id.* (citing *Olaitiman v.*
5 *Emran*, Case No. 2007-SCC-0020-FAM, 2011 MP 8 ¶ 15 (N. Mar. I. 2011)).

7 Here, Alvarez does not dispute that he received the funds, instead he focuses on how he
8 received the funds and how they were used. (*See, e.g.*, Pl’s. Mot. to Dismiss Countercls. 3 (cash
9 from Seahorse given to Alvarez to be used for daughter’s engagement gift; cash for payment on
10 his son’s motorcycle race; cash deposited in his daughter’s bank account for marriage gift).

12 That Alvarez directly handled and received the funds from Seahorse at some point—except
13 those that were sent directly to his daughter’s bank account—but did not retain them for himself
14 does not prevent the Court from finding a benefit was conferred on him. The CNMI Code “directs
15 CNMI courts to the Restatements for guidance” on restitution and unjust enrichment, *Boeing Co.*
16 *v. Leo A. Daly Co.*, Case No. 13-cv-00027, 2014 WL 12694132, at *3 n.3 (D.N. Mar. I. Sept. 22,
17 2014), and the Restatement states that a “benefit” includes not just monetary gain, but also
18 something that “adds to the other’s security or advantage,” such as “where [the person] adds to the
19 property of another, [or] also where [the person] saves the other from expense or loss.” And
20 “benefit” need not be financial; for example, a benefit may exist “where a physician attends an
21 insensible person who is saved subsequent pain.” RESTATEMENT (FIRST) OF RESTITUTION § 1
22 (1937); RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT § 1, Rptr.’s Note a
23 (June 2017 Update) (“Compare Restatement of Restitution § 1 (1937), which is reproduced with
24 only a slight change of wording—in recognition of its wide influence in American law and
25 elsewhere”).
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1 In this case, Seahorse alleges that Alvarez demanded the funds for him and his family
2 members, and that the funds for his family would not have been given absent his demand.
3 (Countercls. ¶¶ 48, 67.) Some demands clearly benefitted Alvarez, such as the spending money
4 and airfare for his annual trip to the Philippines and payment of personal expenses. (*See id.* ¶
5 48(a)-(c).) Other funds may have gone to his family, but the allegations are sufficient for the Court
6 to reasonably infer that he derived an advantage because his demands were met and his family
7 members received funds that Alvarez otherwise may have had to provide with his own personal
8 funds.
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10 Finally, with respect to the funds directly deposited in the bank account belonging to
11 Alvarez's daughter, again, that Alvarez allegedly demanded the funds indicates that a benefit was
12 conferred upon him in the form of defrayed expenses he would have otherwise had to pay.
13 Additionally, as set forth above, the Commonwealth test "does not expressly require the benefit to
14 have been directly conferred on the defendant." *Saipan Air*, 2014 WL 6978488, at *15.
15 Accordingly, the first element of an unjust enrichment claim—that defendant was enriched—is
16 satisfied.
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18 The parties do not appear to dispute the second element—that the enrichment came at
19 Seahorse's expense—given that Seahorse provided all of the alleged financial benefits at issue.
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21 As to the third element, Alvarez argues that Seahorse has failed to show how his retention
22 of the benefits was unjust, stating that the counterclaim fails to allege the benefits were "anything
23 more than gifts bequeathed upon Plaintiff as a result of Plaintiff's personal relationship with
24 Seahorse or as compensation for work performed by Plaintiff." (Pl's. Mot. to Dismiss Countercls.
25 3.) Seahorse does not address this argument in its opposition. (*See* Defs' Br. in Opp'n 2-4.)
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1 As set forth above, the counterclaims include the following allegations: (1) Alvarez
2 demanded these financial benefits; (2) he was compensated as a corporate officer at \$35 per day;
3 (3) he was not an employee under the FLSA; and (4) he repeatedly demanded money from
4 Seahorse and threatened to undermine the business if he did not receive it. Taking these allegations
5 as true, Seahorse has adequately pleaded that Alvarez was not entitled to the financial benefits
6 received because he did not earn them and received them only after making wrongful threats to
7 undermine the business and attempting to interfere with employees and customers. *See Monex*
8 *Deposit Co. v. Gilliam*, 680 F. Supp. 2d 1148, 1163 (C.D. Cal. 2010) (investor’s threats to use
9 website to undermine relationships with potential customers was independently wrongful). Thus,
10 Seahorse has adequately pleaded that, in these circumstances, it would be inequitable for Alvarez
11 to retain the financial benefits not earned or wrongfully obtained at Seahorse’s expense. *See, e.g.,*
12 *Wolk v. Green*, 516 F. Supp. 2d 1121, 1133 (N.D. Cal. 2007) (plaintiff sufficiently pleaded unjust
13 enrichment where attorney allegedly retained funds he did not earn).

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17 Moreover, in the complaint, Alvarez claims he was not sufficiently compensated for his
18 work in violation of the FLSA and CNMI Wage & Hour Act. (*See generally* Compl.) In direct
19 contradiction to the complaint, Alvarez argues in the motion to dismiss that he earned the financial
20 benefits as compensation for his work. (Pl’s. Mot. to Dismiss Countercls. 3.) Permitting him to
21 retain the financial benefits and also seek unpaid wages would effectively permit him a “double
22 recovery.” Under these circumstances, Seahorse has sufficiently pleaded it would be inequitable
23 for Alvarez to retain the financial benefits. *See Uthe Tech. Corp. v. Aetrium, Inc.*, 808 F.3d 755,
24 761 (9th Cir. 2015) (“the animating purpose of the one satisfaction rule is to prevent double
25 recovery and unjust enrichment”).
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1 Alvarez next argues that the statute of limitations has run on some of the claims, but
2 plaintiff has failed to specify when the alleged benefits were conferred and received. (Pl’s. Mot.
3 to Dismiss Countercls. 3-4.) Thus, Alvarez requests that the Court grant the motion to dismiss or
4 entertain a motion for a more definite statement under Fed. R. Civ. P. 12(e). (*Id.* at 4.) Seahorse
5 argues that the counterclaim lists years for many of the benefits at issue, and Alvarez has failed to
6 identify the pertinent statute of limitations. (Defs’ Br. in Opp. 4-5.) In his reply brief, Alvarez
7 states that although the statute of limitations is “somewhat unclear,” it would be either two or six
8 years, and therefore some of the benefits listed would be outside the statute of limitations
9 regardless of which applied. (Pl’s. Reply Br. 2.)

12 An action for unjust enrichment is subject to the relevant state statute of limitations. *See*
13 *Schutte & Koerting, Inc. v. Swett & Crawford*, 298 F. App’x 613, 615 (9th Cir. 2008) (quoting
14 *Wyshak v. City Nat’l Bank*, 607 F.2d 824, 827 (9th Cir. 1979)). The Commonwealth does not
15 expressly provide a statute of limitations for this claim. However, generally, tort claims are
16 governed by a two-year statute of limitations. *United Micronesia Dev. Ass’n, Inc. v. Wickline*,
17 Case No. 14-cv-0003, 2014 WL 12708980, at *3 (D.N. Mar. I. Oct. 7, 2014) (quoting *Nw. Airlines,*
18 *Inc. v. Camacho*, 296 F.3d 787, 791 (9th Cir. 2002) (interpreting 7 CMC § 2503)). All other claims
19 not governed by 7 CMC §§ 2502 (actions on judgment or to recover land), 2503, or 2504 (actions
20 by or against estate of a deceased person) are subject to a six-year statute of limitations. 7 CMC
21 § 2505; *see Bank of Saipan v. Carlsmith Ball Wichman Case & Ichiki*, Case No. 99-004, ¶ 4,5 (N.
22 Mar. I. 1999) (describing section 2505 as a “catch-all” statute of limitations).

25 Whether unjust enrichment is better characterized as a tort or quasi-contract claim presents
26 a complex question. Different states have reached different conclusions. For example, California
27 and New York treat unjust enrichment as an action based in quasi-contract. *See Continental Cas.*
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1 *Co. v. Enodia Corp.*, 417 F. App'x 668, 670 (9th Cir. 2011) (California treats unjust enrichment
2 as a quasi-contract claim); *Paracor Fin., Inc. v. Gen. Elec. Capital Corp.*, 96 F.3d 1151, 1167 (9th
3 Cir. 1996) (noting that unjust enrichment in California and New York is action in quasi-contract).
4 By contrast, Washington considers an action for unjust enrichment to be based in tort. *See Coto*
5 *Settlement v. Eisenberg*, 593 F.3d 1031, 1041 (9th Cir. 2010) (Washington law treats unjust
6 enrichment as a tort).

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8 Here, Seahorse alleges that Alvarez obtained financial benefits after making demands and
9 wrongful threats to its business. In other words, Alvarez wrongfully demanded and received
10 property (money through payments, rent-free apartment, etc.) that rightfully belonged to Seahorse,
11 indicating that the appropriate remedy is a return of the wrongfully obtained funds. And where
12 monetary relief is the remedy sought, historically, the remedy was known as “quasi-contract.” *See*
13 *RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT* § 4 (2011); *RESTATEMENT*
14 *(FIRST) OF RESTITUTION AND UNJUST ENRICHMENT* § 160 (1937); 66 Am. Jur. 2d *Restitution and*
15 *Implied Contracts* § 3 (2017) (“Unjust enrichment implies a contract so that one party may recover
16 damages from another.”).

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19 The Commonwealth Supreme Court has not decided this issue, but several Superior Court
20 cases have found unjust enrichment to sound in quasi-contract. *See, e.g., Hocog v. OKP (CNMI)*
21 *Corp.*, Case No. 06-0445(R), 12 (N. Mar. I. Commw. Super. Ct. Dec. 22, 2006); *Manglona v.*
22 *Tenorio*, Case No. 93-1061, 4 (N. Mar. I. Commw. Super. Ct. June 10, 2002). Consistent with
23 these courts, this Court has suggested, by holding that the Commonwealth “would adopt the well-
24 settled rule that a quasi-contractual claim for ‘restitution’ or ‘unjust enrichment’ will not lie where
25 there exists a valid express contract,” that a cause of action for unjust enrichment is based on quasi-
26 contract. *See Saipan Air*, 2014 WL 6978488, at *14; *Flores v. First Haw. Bank*, Case No. 11-cv-
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1 00022, 2012 WL 2550593, at *6 (D.N. Mar. I. Feb. 15, 2012); *Sin Ho Nam v. Quichocho*, 841 F.
2 Supp. 2d 1152, 1175 (D.N. Mar. I. 2011).

3 The same rule, which bars unjust enrichment claims where there is a valid contract between
4 the parties, applies in California, which, as discussed above, considers unjust enrichment to sound
5 in quasi-contract. *See ESG Capital Partners, LP v. Stratos*, 828 F.3d 1023, 1039 (9th Cir. 2016).
6 And the Ninth Circuit has stated that California’s approach is “consistent with [the] general
7 understanding” that unjust enrichment is “a theory upon which the remedy of restitution may be
8 granted.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 684 (9th Cir. 2009).

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10 Given this authority, the Court finds that the six-year statute of limitations applies to
11 Seahorse’s claim. Under Commonwealth law, the statute of limitations begins to run when the
12 cause of action accrues. 7 CMC § 2512. “Accrue” is not defined, and there is no controlling
13 Commonwealth precedent setting forth its meaning in the context of unjust enrichment. This Court
14 has previously considered the meaning of the term “accrue” in the context of a medical malpractice
15 claim, and articulated the various options for defining accrue: (1) when the injury occurs or (2)
16 the date plaintiff discovers the injury. *See Soloviev v. Markoff*, Case No. 14-cv-00019, 2015 WL
17 1746242, at *4 (D.N. Mar. I. Apr. 13, 2015).

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19 In this case, regardless of which method of measuring the date of accrual, the outcomes
20 would be the same. Seahorse has alleged that Alvarez repeatedly demanded financial benefits,
21 and that many of those benefits were given even though he had no right to them. In other words,
22 Seahorse knew at the time of the injury—i.e., the conferring of the benefit on Alvarez—that he
23 was being unjustly enriched. Thus, the Court may rely on the dates provided by Seahorse in the
24 counterclaim to determine whether all or some of the contested benefits fall outside of the statute
25 of limitations.
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1 Here, Seahorse filed this counterclaim on June 24, 2016. Thus, any benefits conferred prior
2 to June 24, 2010 fall outside the statute of limitations, and Seahorse may not recover them.

3 Accordingly, the following benefits are clearly barred:

- 4 • \$3,000 cash to pay [Alvarez's] bankruptcy attorney Loren Sutton for the
- 5 filing of his Chapter 7 bankruptcy petition in 2009;
- 6 • \$2,000 cash to purchase a car from the Hyatt in 2006.

7 (Countercls. ¶ 48(d)-(e).)

8 The following benefits clearly fall within the statute of limitations:

- 9 • \$2,500 cash to purchase two antique cars from plaintiff's late brother in
- 10 2011;
- 11 • \$1,500 cash for plaintiff's daughter's engagement gift in 2012/2013;
- 12 • \$5,000 cash for his daughter's marriage gift . . . on September 9, 2013;
- 13 • Payment of plaintiff's daughter's then boyfriend's stay at the PIC Hotel for
- 14 three nights in 2011/2012;
- 15 • \$500 cash to pay for plaintiff's nephew to attend a mixed martial arts
- 16 tournament in the mainland on November 5, 2012;
- 17 • \$1,000 cash for plaintiff's leisure trip to Guam in 2015;
- 18 • Payment of \$500 credit card bill of plaintiff for his personal leisure trip to
- 19 Guam in 2014.

20 (Countercls. ¶ 48(f)-(i), (l)-(n).)

21 The remaining benefits listed either do not have dates or the dates are too imprecise for the
22 Court to determine at this time whether they fall outside the statute of limitations. And because
23 the current counterclaims are too "vague and ambiguous" for counterclaim-defendant to "fairly
24 evaluate whether to assert" additional challenges to the statute of limitations," the motion for a
25 more definite statement is granted. *Ctr. for Bio. Diversity v. U.S. Env'tl. Prot. Agency*, 847 F.3d
26 1075, 1082 (9th Cir. 2017). Seahorse must file a more definite statement "within 14 days after
27 notice of the order." Fed. R. Civ. P. 12(e).

1 Accordingly, for the reasons set forth above, Alvarez’s motion to dismiss is granted in part
2 and denied without prejudice in part.

3 **C. Second Cause of Action: Abuse of Process**

4 Seahorse and Walker allege that Alvarez is liable for abuse of process because he filed this
5 lawsuit in retaliation for being denied his request for fifty percent of the Seahorse shares, all the
6 while knowing, and having sworn under penalty of perjury in his bankruptcy proceedings, that he
7 was not entitled to these shares and was not an employee of Seahorse. (Countercls. ¶¶ 72-81.)

8 Alvarez argues that the abuse of process claim should be dismissed because Seahorse and
9 Walker have failed to allege that the primary purpose for this lawsuit is other than to resolve a
10 legal dispute. (Pl’s. Mot. to Dismiss 5.) Seahorse and Walker argue that the abuse of process
11 claim is based on Alvarez’s demand for fifty percent of the shares in Seahorse, which he demanded
12 despite knowing he was not entitled to them. (Def’s’ Br. in Opp’n 5.) They also argue that the
13 abuse of process claim is based on Alvarez filing this lawsuit, claiming that he was employed by
14 Seahorse when he previously stated in his 2009 bankruptcy petition that his only work was as a
15 self-employed fisherman. (*Id.*)

16 No party has cited to any CNMI case law as to the elements of an abuse of process claim,
17 nor has this Court found any. In the absence of written law or local customary law to the contrary,
18 “the rules of the common law, as expressed in the restatements of the law . . . shall be the rules of
19 decision in the courts of the Commonwealth.” 7 CMC § 3401. Under the Restatement (Second)
20 of Torts, “[o]ne who uses a legal process, whether criminal or civil, against another primarily to
21 accomplish a purpose for which it is not designed, is subject to the other for harm caused by the
22 abuse of process.” RESTATEMENT (SECOND) OF TORTS § 682 (1977). Thus, “there is no action for
23 abuse of process when the process is used for the purpose for which it is intended, but there is an
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1 incidental motive of spite or an ulterior purpose of benefit to the defendant.” *Id.* cmt. b. For an
2 abuse of process claim to stand “there must be use of the process for an immediate purpose other
3 than that for which it was designed and intended.” *Id.* A typical case of abuse of process involves
4 “one of some form of extortion, using the process to put pressure upon the other to compel him to
5 pay a different debt or to take some other action or refrain from it.” *Id.*

7 Here, Seahorse and Walker have stated a claim for abuse of process. In his bankruptcy
8 petition, Alvarez stated he was “self-employed” as a fisherman (Schedule of Income, ECF No. 5-
9 7), and that he was not an officer or shareholder in any corporation. (Stmnt. of Fin. Affairs, ECF
10 No. 5-8.) This runs counter to Alvarez’s allegations in the complaint that he was an employee of
11 Seahorse, and that “[f]or the entire time of his employment with Seahorse, [he] worked at least
12 twelve hours per day, six days a week, and around six hours every Sunday” and only received \$25
13 per day. (Compl. ¶¶ 14-15.)

15 Lying under penalty of perjury may constitute an abuse of process claim, and defendants
16 have laid out a *prima facie* basis for such a claim. *See Sears v. Haas*, 509 F. App’x 935, 936 (11th
17 Cir. 2013) (affirming district court’s decision to dismiss plaintiff’s civil rights complaint for failing
18 to disclose all prior civil cases under penalty of perjury); *see also Rivera v. Allin*, 144 F.3d 719,
19 731 (11th Cir. 1998), *abrogated on other grounds*, 549 U.S. 199 (2007) (observing that lying under
20 penalty of perjury is the type of abuse of process that warrants dismissal).

22 Further, because this case is before the Court on a motion to dismiss, it must take as true
23 Walker and Seahorse’s well-pleaded allegations. The allegations are that Alvarez repeatedly
24 demanded corporate funds for his personal use, and demanded fifty percent of the shares in
25 Seahorse despite knowing he was not entitled to them. First, they allege that no promise to give
26 Alvarez fifty percent of Seahorse shares was ever made between the parties. Second, they allege
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1 that in his bankruptcy petition, he denied any official role with a corporation or interest therein.
2 Thus, Seahorse and Walker argue, their allegations and exhibits demonstrate that Alvarez is using
3 this lawsuit to extort more money or to retaliate against them for failing to agree to his demands.
4 Taking these allegations together, it is reasonable to infer that the primary purpose of this lawsuit
5 is to harass or coerce Seahorse and Walker. Although the evidence eventually discovered and
6 presented to the Court may not ultimately support the counterclaim, at this stage, the motion to
7 dismiss is denied.
8

9 **D. Third Cause of Action: Breach of Fiduciary Duty**

10 Seahorse alleges four breaches of fiduciary duty: (1) Alvarez reimbursed himself with
11 company money or sought reimbursement from the company for personal expenses; (2) Alvarez
12 directed staff to “go home” or keep the boats docked; (3) Alvarez took photographs of customers
13 he thought were illegal workers and threatened to report that illegal activity to authorities; and (4)
14 threatened to disrupt Seahorse’s business if his stipend was not increased from \$400 to \$600 per
15 week. (Countercls. ¶¶ 86-91.) Alvarez argues that the breach of fiduciary duty claim should be
16 dismissed because Seahorse has failed to allege an injury or loss to the corporation as a result of
17 Alvarez’s alleged violations. (Pl’s. Mot. to Dismiss Countercls. 5-6.)
18

19 To sustain a claim for breach of fiduciary duty, a “plaintiff must allege facts demonstrating
20 that: 1) a fiduciary relationship exists; (2) there has been a breach of the fiduciary duty; and 3)
21 damages resulted from the breach.” *United Micronesia Dev. Ass’n, Inc.*, 2014 WL 12708980, at
22 *4. If the breaching party is a director, a breach may occur in the following ways: (1) negligence;
23 (2) fraudulent misappropriation of corporate property to benefit the director or a third party; (3)
24 acquisition of any undue personal advantage, benefit, or profit; or (4) other similar conduct
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1 sustaining injury or loss to the corporation. *S. Seas Corp. v. Sablan*, 525 F. Supp. 1033, 1039 (D.
2 N. Mar. I. 1981) (citing *S. Seas Corp. v. Kashiwa*, Case No. 79-0024, 4-5 (D. N. Mar. I. 1980)).

3 As an initial matter, the parties do not dispute that Alvarez owed a fiduciary duty to
4 Seahorse. And except for the claim regarding photographing customers, the parties do not dispute
5 that a duty was breached. Instead, they dispute whether Seahorse suffered injury due to the breach.
6

7 First, Alvarez argues that there was no injury to Seahorse from the reimbursements that he
8 demanded or that he improperly gained by writing company checks for his personal expenses.
9 (Pl’s. Mot. to Dismiss Countercls. 6.) Seahorse responds that any advantage or benefit he gained
10 by wrongfully demanding or writing checks from corporate funds to cover his personal expenses
11 is obvious. In the reply brief, Alvarez appears to have concurred that this argument sufficiently
12 states a breach of fiduciary duty, as he argues that “most” of this counterclaim should be dismissed,
13 and does not raise any arguments as to this part of the counterclaim. (*See* Pl’s. Reply Br. 5-6.)
14 The Court agrees that the injury is obvious. Personal gain, or “a pecuniary benefit,” at the expense
15 of a corporation is an injury caused by a breach of fiduciary duty. *See United States v. Salman*,
16 792 F.3d 1087, 1092 (2015) (quoting *Dirks v. S.E.C.*, 463 U.S. 646, 663 (1983)). Seahorse alleges
17 that Alvarez received just such a pecuniary gain at its expense. Seahorse has therefore sufficiently
18 pleaded injury. *See Sablan*, 525 F. Supp. at 1039 (officer breached fiduciary duty by financing his
19 land purchase with corporate funds).
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22 Next, Alvarez argues that Seahorse suffered no injury due to his alleged attempts to tell
23 employees to “go home” or to keep the boats docked. (Pl’s. Mot. to Dismiss Countercls. 6.)
24 Seahorse claims that this alleged conduct was an “effort to sabotage and undermine the business”
25 and to “hold the business hostage until he was paid more money,” and resulted in “damages” for
26 which it seeks “general, compensatory and nominal damages.” (Countercls. ¶¶ 88-89, 93; *id.* at p.
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1 32.) In its opposition brief, Seahorse clarifies the alleged damages, arguing that Alvarez’s conduct
2 caused injury through decreased workforce productivity and morale, and loss of company time.
3 (Defs’. Br. in Opp’n 6.)

4 A breach of fiduciary duty may sound in either tort or contract, depending on the
5 circumstances of the case. *See Fed. Deposit Ins. Corp. v. Former Officers and Dirs. of Metro.*
6 *Bank*, 884 F.2d 1304, 1307 (9th Cir. 1989); RESTATEMENT (SECOND) OF AGENCY § 401 cmt. a
7 (1958). The Commonwealth has not addressed this issue, but this Court predicts that in the
8 circumstances alleged here, the Commonwealth Supreme Court would determine that the action is
9 characteristic of a tort for purposes of assessing damages.
10

11 First, a review of other state laws, including those within the Ninth Circuit, indicates that,
12 for purposes of damages or statute of limitations, breach of fiduciary duty is more characteristic of
13 a tort claim when there is no express contract between the parties, and the duty arises from statutory
14 or common law or an implied in law contract. *See Jachetta v. United States*, 653 F.3d 898, 905
15 (9th Cir. 2011) (Alaska treats fiduciary duty as tort or contract depending on source of duty);
16 *Marlys Bear Medicine v. United States ex rel. Sec’y of Dep’t of Interior*, 241 F.3d 1208, 1218 (9th
17 Cir. 2001) (Montana treats fiduciary duty as tort); *Kona Enterps., Inc. v. Estate of Bishop*, 229
18 F.3d 877, 886 (9th Cir. 2000) (Hawaii law treats fiduciary duty as tort or contract depending on
19 source of duty); *Material Supply Int’l v. Chen*, 141 F.3d 1177, at *1 (9th Cir. 1998) (Table)
20 (Oregon treats fiduciary duty as tort).
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23 Second, as set forth above, in the absence of written law or local customary law to the
24 contrary, “the rules of the common law, as expressed in the restatements of the law . . . shall be
25 the rules of decision in the courts of the Commonwealth.” 7 CMC § 3401. And the Restatement
26 of Torts and strict nature of fiduciary duty has led at least one court to conclude that a breach of
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1 fiduciary duty action is an equitable tort. *See In re Rural Metro Corp.*, 88 A.3d 54, 98 & n.22
2 (Del. Ch. 2014).

3
4 Given the above authority, and no allegation that a contract exists between the parties, the
5 fiduciary duty counterclaim is more characteristic of a tort than a contract, and damages available
6 in tort are therefore available to Seahorse in this case. In tort claims, a plaintiff may obtain “the
7 reasonably foreseeable harms caused by the wrong,” *Skydive Ariz., Inc. v. Quattrocchi*, 673 F.3d
8 1105, 1112 (9th Cir. 2012), and includes damages “for all harm, past, present and prospective,
9 legally caused by the tort.” RESTATEMENT (SECOND) OF TORTS § 910 (1979). And the “primary
10 characteristic of an action based upon tort type rights is the availability of compensatory remedies,”
11 including “damages for pain and suffering, emotional distress, harm to reputation, or other
12 consequential damages.” *Burns v. United States*, 76 F.3d 384, at *2 (9th Cir. 1996) (Table)
13 (internal quotations and citations omitted).

14
15 Here, Seahorse claims it suffered damage from Alvarez’s attempts to hold the business
16 hostage and interfere with employees’ work. Although Seahorse does not expressly list loss of
17 company time or decreased morale in the counterclaim, instead specifying these damages in its
18 opposition brief, reading the counterclaim as a whole, it is reasonable to infer that interference
19 with employees’ work that causes them delay in performing their duties adequately states an
20 economic loss, potentially in the form of lost profits or lost business opportunities. At this stage
21 of the litigation, these allegations are sufficient. *See Irvine Co .v. Great Amer. Ins. Co.*, 91 F.3d
22 152, at *2 (9th Cir. 1996) (Table) (citing *Giddings v. Indus. Indem. Co.*, 169 Cal. Rptr. 278, 281
23 (Cal. Ct. App. 1980)) (listing “lost profits, loss of goodwill, loss of the anticipated benefit of a
24 bargain” as economic losses).
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1 Next, Alvarez argues that photographing employees that he suspected to be “illegal
2 workers” was not a breach and that Seahorse suffered no injury because this action was in the
3 interests of the corporation. (Pl’s. Mot. to Dismiss Countercls. 8.) Seahorse accurately clarifies
4 in its brief in opposition that the counterclaim addresses customers who Alvarez claimed were
5 illegal workers, not Seahorse’s own employees. (Defs’. Br. in Opp’n 7.) In reply, Alvarez argues
6 that because his employment was improperly handled, Seahorse may have mishandled other
7 employees at the company. (Pl’s. Reply Br. 6.)

9 First, Seahorse has sufficiently alleged a breach of the fiduciary duty. A corporate officer
10 owes a “strict duty of loyalty to the corporation.” *Sablan*, 525 F. Supp. at 1039. This duty requires
11 that an officer act solely in the interest of the corporation, and not in his own interests at the expense
12 of the corporation. *Govendo v. Mar. Pub. Land Corp.*, Case No. 90-036, 1992 WL 62888, at *3
13 n.5 (N. Mar. I. 1992). That Alvarez was attempting to deter customers in an attempt to benefit
14 himself financially sufficiently alleges that he breached his duty of loyalty.

16 Second, Seahorse has sufficiently alleged an injury. As discussed above, an injured party
17 may recover all past, present, and future losses that are foreseeable from the breaching officer’s
18 conduct. In this case, it is foreseeable that Seahorse would suffer economic losses from lost
19 customers or business opportunities and loss of reputation. Because this counterclaim is based on
20 Alvarez’s conduct as to customers, not Seahorse’s employees, Alvarez’s argument regarding
21 improper employment practices is irrelevant. Thus, Seahorse has stated a claim for breach of
22 fiduciary duty.

24 Finally, Seahorse claims that Alvarez breached his fiduciary duties by threatening to further
25 disrupt the business operations unless the corporation increased his weekly stipend from \$400 to
26 \$600. (Countercls. ¶ 91.) Alvarez makes no mention of this in his motion to dismiss or reply brief.
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1 However, Seahorse has failed to articulate how a threat to disrupt the business by “acting as a
2 nuisance and filing frivolous claims” caused an injury to the business. Certainly, such a threat is
3 unwelcome, but without additional allegations to suggest that the corporation suffered injury, this
4 part of the claim is too speculative to survive.
5

6 Accordingly, the motion to dismiss the breach of fiduciary duty claim is granted in part
7 and denied in part.

8 **E. Fourth Cause of Action: Tortious Interference with Contract**

9 Alvarez argues that the tortious interference with contract counterclaim must be dismissed
10 because Seahorse has failed to allege any pecuniary losses from his conduct, and “Seahorse knows
11 that Mr. Alvarez” failed to actually induce any employees to breach their contracts or to cause
12 customers to cease doing business with it. (Pl’s. Mot. to Dismiss Countercls. 7; Pl’s. Reply Br. 6.)
13

14 The Commonwealth has adopted the Restatement (Second) of Torts on interference with
15 contract relations and economic relations. *Lucky Dev. Co., Ltd. v. Tokai U.S.A., Inc.*, 3 N.M.I. 79,
16 93 (1992). Thus, to state a claim for tortious interference with contract, a plaintiff must plead the
17 following:
18

19 One who intentionally and improperly interferes with the performance of a contract
20 (except a contract to marry) between another and a third person by inducing or
21 otherwise causing the third person not to perform the contract, is subject to liability
22 to the other for the pecuniary loss resulting to the other from the failure of the third
23 person to perform the contract.

24 RESTATEMENT (SECOND) OF TORTS § 766 (1979). Pecuniary loss may include lost sales as a result
25 of the breach of contract, or the expense of dealing with the repercussions of the breach. *See H.L.*
26 *Hayden Co. of New York, Inc. v. Siemens Med. Sys., Inc.*, 879 F.2d 1005, 1024 (2d Cir. 1989)
27 (affirming the district court’s dismissal of the intentional interference with contractual relations
28 counterclaim because counterclaimant “suffered no pecuniary loss either in the sales, since it

1 profited from them, or from the expense of tracking down the sources of Schein Dental's
2 equipment, as this was a necessary part of enforcing the Dealership Agreement”).

3 First, with respect to Alvarez’s argument that Seahorse suffered no pecuniary harm, for the
4 same reasons set forth in section E, this argument is unpersuasive. Interfering with employees’
5 duties or delaying them in completion of duties may cause damages, as Seahorse claims, such as
6 lost profits or loss of business opportunities. Similarly, dissuading customers from doing business
7 with Seahorse may cause damage, including lost profits and business opportunities.

8
9 Second, Alvarez states that “Seahorse knows” its counterclaim is false, and is therefore
10 nothing but speculation. But on a motion to dismiss, the well-pleaded allegations must be taken
11 as true, and nothing in the counterclaims suggests that Seahorse does, in fact, know its claims are
12 false. Accordingly, the motion to dismiss this cause of action is denied.

13
14 **F. Fifth Cause of Action: Intentional Interference with Prospective Economic**
15 **Advantage**

16 Alvarez argues that the intentional interference with prospective economic advantage
17 counterclaim must be dismissed because it is conclusory, and “Seahorse fails to allege with
18 specificity what relationships [with potential customers] were damaged and what business it lost
19 due to Plaintiff’s alleged conduct.” (Pl’s. Mot. to Dismiss Countercls. 7.) And Alvarez again
20 argues that “Seahorse knows” that he “did not cause any actual customers or venders to cease
21 doing business with Seahorse.” (Pl’s. Reply Br. 6.)

22
23 The Commonwealth Supreme Court treats an intentional interference with prospective
24 economic advantage as a claim for intentional interference with performance of a contract. *Del*
25 *Rosario v. Camacho*, 2001 MP 3, 18 (N. Mar. I. 2001) (citing RESTATEMENT (SECOND) OF TORTS
26 § 766 (1979)). Thus, for this claim to survive, “[t]here must be a prospective contractual
27 relationship between the plaintiff and a third party.” *Del Rosario*, 2001 MP at 18 (citing *Kutcher*
28

1 v. *Zimmerman*, 957 P.2d 1076, 1088 (Haw. Ct. App. 1998)). And the prospective economic
2 advantage “must have been reasonably probable to occur, but for defendant’s interference.” *Id.* at
3 18 (citing *Youst v. Longo*, 729 P.2d 728, 733 (Cal. 1987)).

4
5 In this case, the allegations, while somewhat cursory, are not conclusory. Seahorse has
6 alleged how Alvarez interfered with potential customers, including “independent tour guides”
7 (Countercls. ¶¶ 53-54, 103, 105), that he acted this way because he “knew” it would “create a
8 perception of chaos, instability and stress that would dissuade customers from doing business with
9 Seahorse,” and that these actions “actually disrupted Seahorse’s economic relationships with
10 potential customers in that Seahorse lost business it would otherwise [] have obtained.” (*Id.* ¶¶
11 105, 106.)

12
13 Taking these allegations together, it is reasonable to infer that because plaintiff “knew” his
14 conduct would create a negative perception of Seahorse, his acts were intentional and improper.
15 Further, the allegations that Seahorse “actually” lost business, or suffered pecuniary harm, that it
16 “would otherwise have obtained,” from customers, including tour guides, is sufficient to plead that
17 relationships were damaged. It is not required that Seahorse list specific customers at this stage,
18 although it may be relevant for proving damages at trial. That Seahorse specifies which
19 relationships—potential customers and tour guides—is sufficient. Moreover, by alleging that it
20 “actually” lost potential customers and business, it is reasonable to infer that Seahorse was injured
21 due to Alvarez’s conduct.
22

23
24 And, for the reasons set forth above, Alvarez’s argument that Seahorse knows its claims
25 are false is unavailing. Accordingly, the motion to dismiss is denied.

26 //

27 /

1 **G. Sixth Cause of Action: Conversion**

2 Alvarez argues that the conversion claim should be dismissed. (Pl’s. Mot. to Dismiss
3 Countercls. 7.)² Additionally, as noted above, Alvarez argues that Walker lacks standing to assert
4 a claim for conversion.

5
6 ***i. Registration of Seahorse Property***

7 Seahorse alleges that Alvarez wrongfully registered eight water jet skis and five boats in
8 his name even though this equipment belonged to Seahorse. Alvarez argues that the conversion
9 claim must fail because Seahorse still controls the equipment and registration did not interfere with
10 its ability to use the equipment. (Pl’s. Mot. to Dismiss Countercls. 8.) Seahorse argues that the
11 conversion is obvious, given that registering the vehicles in Alvarez’s name “seriously
12 interfere[d]” with their property rights. (Defs.’ Brief in Opp’n 9-10.)

13
14 As this Court has previously stated, the Commonwealth Supreme Court “has generally
15 adopted the Restatement Second of Torts’ definition of conversion and relied on other state courts
16 applying the same.” *Universal Grp. Dev. Inc. v. Wanzhong Yu*, Case No. 15-cv-0002, 2015 WL
17 2194811, at *3 (D.N. Mar. I. May 6, 2015). Thus, conversion is “an intentional exercise of
18 dominion or control over a chattel which so seriously interferes with the right of another to control
19 it that the actor may justly be required to pay the other the full value of the chattel.” RESTATEMENT
20 (SECOND) OF TORTS § 222A(1) (1965). A conversion may be committed in the following ways:

- 21
22 a) intentionally dispossessing another of a chattel,
23 b) intentionally destroying or altering a chattel in the actor’s possession,
24 c) using a chattel in the actor’s possession without the authority so to use it,
25 d) receiving a chattel pursuant to a sale, lease, pledge, gift or other transaction
26 intending to acquire for himself or for another a proprietary interest in it,

27
28 ² The motion to dismiss states that the requested relief is dismissal in part with a requirement that Seahorse replead with greater specificity. The actual substance and argument of the motion, however, requests only dismissal. Accordingly, the Court will treat the motion as one for full dismissal of Count VI.

- e) disposing of a chattel by a sale, pledge, gift or other transaction intending to transfer a proprietary interest in it,
- f) misdelivering a chattel, or
- g) refusing to surrender a chattel on demand.

RESTATEMENT (SECOND) OF TORTS § 223 (1965).

A dispossession may be committed in the following ways:

- a) taking a chattel from the possession of another without the other's consent,
or
- b) obtaining possession of a chattel from another by fraud, or
- c) intentionally barring the possessor's access to a chattel, or
- d) intentionally destroying a chattel while it is in another's possession.

RESTATEMENT (SECOND) OF TORTS § 221 (1965).

Here, Seahorse has alleged that it purchased the equipment with corporate funds for use and control by the business, but Alvarez registered the equipment in his own name. The submitted exhibits show that the equipment was registered with Alvarez as the "Owner." (ECF. No. 5-9.)

Registration of boats and other vehicles is done for the purpose of asserting or tracing ownership. *See Look v. Mobley*, 323 F.2d 214, 215-16 (9th Cir. 1963) (upon registration of a vehicle, the Department shall issue a certificate of ownership to the legal owner). And a vehicle owner is someone with "all the incidents of ownership including the legal title of a vehicle," such as use and ability to sell or transfer title. *See* 9 CMC § 1103(e).

Thus, that Alvarez affirmatively listed himself as the "Owner" of the equipment suggests he was attempting to acquire a legal right to ownership of the equipment, and thereby committed "an intentional exercise of dominion or control over a chattel." *See Mindys Cosmetics, Inc. v. Dakar*, 611 F.3d 590, 601 (9th Cir. 2010) (holding registration of another's trademark was attempt to exert ownership over property); *Kremen v. Cohen*, 337 F.3d 1024, 1030 (9th Cir. 2003) (holding

1 that registration of third party's domain name could constitute conversion because it was attempted
2 to obtain ownership).

3 Given that Alvarez is listed as the legal owner of the equipment, Seahorse may have been
4 able to use the equipment, but it is not able to exercise "all the incidents of ownership" that it
5 would otherwise be entitled to exercise, such as to control the sale of equipment. *See Penn Cent.*
6 *Transp. Co. v. City of New York*, 438 U.S. 104, 142-43 (1978) (noting that property rights
7 include "right to possess, use and dispose" of it). And the registration in Alvarez's name is
8 directly contrary to or inconsistent with Seahorse's ownership. Thus, Seahorse has sufficiently
9 pleaded serious interference so as to justify damages. Accordingly, Seahorse has stated a claim
10 for conversion, and cross-defendant's motion to dismiss is denied.

11
12
13 ***ii. Use of Toyota Tacoma***

14 Next, Alvarez argues that the counterclaim related to the Toyota Tacoma arose only after
15 this litigation began and therefore lacks merit, and that Seahorse intended for him to have the truck.
16 (Pl's. Mot. to Dismiss Countercls. 8-9; Pl's. Reply Br. 7.) Walker argues that she has standing to
17 assert a counterclaim for conversion, and that she has demanded return of the car, but Alvarez has
18 kept it, which constitutes conversion. (Defs.' Brief in Opp'n 9-10.)

19 A party has standing to bring a claim if she has suffered a concrete and particularized injury
20 in fact; there is a "causal connection between the injury and the conduct complained of"; and "it
21 must be likely . . . that the injury will be redressed by a favorable decision." *Lujan v. Defenders*
22 *of Wildlife*, 504 U.S. 555, 560-61 (1992). And "the proper plaintiff in a conversion action is one
23 who had the right to immediate possession of the chattel at the time of the alleged conversion."
24 *Universal Grp. Dev. Inc.*, 2015 WL 2194811, at *3 (quoting *Universal Mktg. & Entrn't, Inc. v.*
25 *Bank One of Ariz. N.A.*, 53 P.3d 191, 193-94 (Ct. App. Ariz. 2002)).

1 Here, Walker alleges that she owns the Toyota Tacoma in dispute, and provided a Bureau
2 of Motor Vehicle Certificate of Ownership. (Countercls. ¶ 118; ECF. No. 5-10.) She also alleges
3 that Alvarez “exercised control” over the vehicle by driving it without her permission.³ In sum,
4 Walker had the right to immediate possession and use of the vehicle at the time of the alleged
5 conversion. The injury in fact is loss of control of the vehicle while Alvarez allegedly took and
6 drove it. His actions directly caused the alleged harm, which is substantial interference with her
7 ability to possess and use the vehicle. A favorable judgment against Alvarez would redress the
8 harm, either through monetary compensation for loss of the vehicle or a return of the vehicle.
9 Accordingly, these allegations and the Certificate of Ownership sufficiently establish that Walker
10 has standing to pursue this counterclaim.
11
12

13 Here, Walker has alleged that she has been denied use of her vehicle due to Alvarez
14 continuing to drive it without her permission. Conversion “may include misuse or abuse of
15 property” and “use in an unauthorized manner or [] an unauthorized extent of property placed in
16 one’s custody for limited use.” *Dowling v. United States*, 473 U.S. 207, 231 (1985). Thus, even
17 if it were true that she intended for him to have the truck for a period of time, given that she has
18 sufficiently pleaded that she is the owner, Alvarez may be subject to liability for conversion on the
19 grounds that she demanded its return and he refused to return it. *See id.*; RESTATEMENT (SECOND)
20 OF TORTS §§ 228 (exceeding authorized use of chattel can constitute conversion), 237 (conversion
21 by refusal to surrender chattel after demand) (1965). Thus, Walker has sufficiently pleaded that
22 Alvarez, by driving the car despite knowing he lacks permission to do so, has exercised control
23
24
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26

27 ³ Seahorse and Walker also allege that Alvarez registered the Toyota Tacoma in his name. (Countercls. ¶ 65.)
28 However, they do not appear to pursue this avenue regarding the vehicle in the actual conversion claim, arguing
instead that he drove the vehicle without permission. Accordingly, the Court declines to address this allegation as
part of the counterclaim.

1 over the vehicle and seriously interfered with her right to use it. Accordingly, she has stated a
2 claim for conversion, and the motion to dismiss this claim is denied.

3 **H. Seventh Cause of Action: Declaratory Judgment**

4 Alvarez argues that the counterclaim for a declaratory judgment to determine ownership
5 rights to the property at issue in the conversion counterclaim should be dismissed because it is a
6 remedy, not a cause of action. (Pl’s Mot. to Dismiss Countercls. 9.) Seahorse and Walker do not
7 dispute this point, but instead argue that the sole case cited by Alvarez fails to support the relief
8 being sought. (Opp’n 10.) Alvarez concedes the case provided was an incorrect citation, and
9 offers a different case in support of his argument, *Universal Development, Inc. v. Wanzhong Yu*,
10 Case No. 15-cv-0002, 2015 WL 2194811, at *2 n.5 (D. N. Mar. I. May 6, 2015) (“[d]eclaratory
11 and injunctive relief are remedies, not causes of action”) (internal citation omitted).

14 A declaratory judgment offers parties “a means by which rights and obligations may be
15 adjudicated in cases . . . involving an actual controversy that has not reached a stage at which either
16 party may seek a coercive remedy and in cases where a party who could sue for coercive relief has
17 not yet done so.” *Seattle Audubon Soc’y v. Moseley*, 80 F.3d 1401, 1405 (9th Cir. 1996) (citing
18 28 U.S.C. § 2201; WRIGHT & MILLER, FED. PRAC. & PROC.: CIV. 2D § 2571, 569). Thus, in cases
19 where a federal court would otherwise have jurisdiction, a court may “allow earlier access to
20 federal courts in order to spare potential [litigants] from the threat of impending litigation.” *Id.*
21 (citing *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667 (1950); WRIGHT & MILLER at 569-
22 70).

25 “Declaratory judgment actions are justiciable if there is a substantial controversy, between
26 parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance
27 of a declaratory judgment.” *Seattle Audubon Soc’y*, 80 F.3d at 1405 (quoting *Nat’l Basketball*
28

1 *Ass'n v. SDC Basketball Club*, 815 F.2d 562, 565 (9th Cir. 1987)). A district court has “unique
2 and substantial discretion in deciding whether to declare the rights of litigants,” and “the normal
3 principle that federal courts should adjudicate claims within their jurisdiction yields to
4 considerations of practicality and wise judicial administration.” *Gov’t Emps. Ins. Co. v. Dizol*, 133
5 F.3d 1220, 1232 (9th Cir. 1998) (quoting *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286, 288
6 (1995)).
7

8 In this case, Seahorse and Walker have also alleged a counterclaim for conversion. As set
9 forth above, resolution of the conversion counterclaim will resolve all ownership questions
10 regarding the same property at issue in the request for a declaratory judgment. “Although the
11 existence of another adequate remedy does not *preclude* a judgment for declaratory relief . . . the
12 availability of other adequate remedies *may* make declaratory relief inappropriate.” *United*
13 *Safeguard Distrib. Ass’n, Inc. v. Safeguard Bus. Sys., Inc.*, 145 F. Supp. 3d 932, 960-61 (C.D. Cal.
14 2015) (internal citations and quotations omitted). Thus, where one claim may resolve the questions
15 raised in the declaratory judgment action, the latter may be unnecessarily duplicative. Such is the
16 case here.
17

18
19 Moreover, Seahorse and Walker do not allege facts to show that there is a “sufficient
20 immediacy” requiring judicial intervention in addition to the claim for conversion. And their
21 request does not serve the objectives of the Declaratory Judgment Act—to prevent additional
22 litigation and efficiently use judicial resources—but instead seeks yet another “remedial measure
23 to address previously alleged” causes of action for conversion. *Id.* at 961; *see also Takeda Pharm.*
24 *Co., Ltd. v. Mylan Inc.*, 62 F. Supp. 3d 1115, 1127 (N.D. Cal. 2014) (declining to issue declaratory
25 judgment where claim was duplicative of patent infringement claim that offered adequate relief);
26 *Sentinel Ins. Co., Ltd. v. Tzion*, Case No. 15-cv-00208, 2017 WL 1197108, at *8 (D. Ariz. Mar.
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28

1 31, 2017) (suggesting declaratory judgment may be inappropriate because the order adjudicated
2 the parties' ownership rights in the conversion claim).

3 Accordingly, the motion to dismiss the counterclaim for a declaratory judgment is granted.
4

5 **VI. CONCLUSION**

6 For the reasons set forth above, the Court GRANTS IN PART and DENIES IN PART
7 counterclaim-defendant Alvarez's motion to dismiss the counterclaims. (ECF No. 8.)

8 It is hereby ORDERED that the first (unjust enrichment), third (breach of fiduciary duty),
9 fourth (tortious interference with contract), fifth (intentional interference with prospective
10 economic advantage), and part of the sixth (conversion) causes of action as to counterclaim-
11 plaintiff Walker are dismissed with prejudice.
12

13 It is further ORDERED that the first cause of action (unjust enrichment) is dismissed in
14 part with prejudice and part without prejudice, part of the third cause of action (breach of fiduciary
15 duty) is dismissed with prejudice, and the seventh cause of action (declaratory judgment) is
16 dismissed with prejudice as to counterclaim-plaintiff Seahorse.
17

18 Counterclaim-plaintiffs Seahorse and Walker may proceed with the second (abuse of
19 process) and sixth (conversion) causes of action. Counterclaim-plaintiff Seahorse may proceed
20 with the remaining portions of the first (unjust enrichment) and third (breach of fiduciary duty)
21 causes of action, and with the fourth (tortious interference with contract) and fifth (intentional
22 interference with prospective economic advantage) causes of action.
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1 Counterclaim-plaintiffs are also ORDERED to submit a more definite statement regarding
2 the surviving parts of their first cause of action within fourteen (14) days of receiving notice of
3 this Order.
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5 IT IS SO ORDERED.

6 Dated this 8th of September, 2017.

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10 RAMONA V. MANGLONA
11 Chief Judge
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