

DISTRICT COURT, COUNTY OF JEFFERSON STATE OF COLORADO 100 Jefferson County Parkway Golden, Colorado 80401	DATE FILED October 7, 2025 12:12 PM CASE NUMBER: 2023CV31404 ▲ COURT USE ONLY ▲
Plaintiff: COLORADO AMATEUR HOCKEY ASSOCIATION, a Colorado 501(c)(3) Organization v. Defendants: RANDY KANAI, an individual; and INTERNATIONAL SPORTS EVENT MANAGEMENT, LLC, d/b/a COHockey, a/d/b/a Rocky Mountain Sports Testing, a/d/b/a Team Colorado, a Colorado limited liability company Third-Party Plaintiff: RANDY KANAI, an individual v. Third-Party Defendant: BRIAN SMITH, an individual	Case No. 2023CV31404 Division: 9 Courtroom: 550
COURT TRIAL ORDER & ENTRY OF JUDGMENT	

THIS MATTER is before the Court on the Court Trial held on April 1, 2025, and April 2, 2025. Defendant/Third-Party Plaintiff Randy Kanai filed his Proposed Findings of Fact and Conclusions of law on May 4, 2025. Plaintiff Colorado Amateur Hockey Association (“CAHA”) and Third-Party Defendant Brian Smith filed their Proposed Findings of Fact and Conclusions of Law on May 21, 2025. The Court, having heard the testimony and arguments presented at trial and having reviewed the briefings, record, and relevant law, FINDS and ORDERS as follows:

I. BACKGROUND

Plaintiff CAHA is a nonprofit organization that governs Colorado's amateur hockey programs as an affiliate of USA Hockey, Inc. ("USA Hockey"). Defendant/Third-Party Plaintiff Mr. Kanai is CAHA's former president. Third-Party Defendant Mr. Smith is CAHA's current president. This dispute centers around Mr. Kanai's management of CAHA's finances and Mr. Kanai's conduct during his tenancy as CAHA's president.

Mr. Kanai was president of CAHA from approximately 2010 to May of 2023. In May of 2023, Mr. Smith was elected to replace Mr. Kanai as CAHA's president in an election between Mr. Smith and Mr. Kanai. Shortly before and after Mr. Smith became president of CAHA, questions were raised regarding Mr. Kanai's management of CAHA's finances and Mr. Kanai's conduct while president of CAHA. Many of these concerns were related to Mr. Kanai's ownership and operation of Defendant International Sports Event Management, LLC ("ISEM"), d/b/a COHockey, a/d/b/a Rocky Mountain Sports Testing ("RM Sports Testing"), a/d/b/a Team Colorado, during Mr. Kanai's time as president. Mr. Smith made statements at CAHA board meetings related to Mr. Kanai's alleged impropriety.

Based on its belief that Mr. Kanai mismanaged finances, converted funds, operated CAHA events without authorization, and failed to disclose conflicts of interest, CAHA brought claims against Mr. Kanai for civil theft, conversion, breach of fiduciary duty, and unjust enrichment.

Based on his belief that his management of CAHA's finances and his operation of ISEM and its d/b/a(s) were proper, Mr. Kanai brought third-party claims against Mr. Smith for defamation per se and slander in profession based on Mr. Smith's statements at CAHA board meetings related to Mr. Kanai's alleged impropriety.

A Court Trial on CAHA's claims against Mr. Kanai and on Mr. Kanai's third-party claims against Mr. Smith was held on April 1, 2025, through April 2, 2025. The Court heard testimony from Mr. Kanai, Mr. Smith, Casey Jorgensen (General Counsel for USA Hockey), Kelly Mahncke (USA Hockey Assistant Executive Director of Finance Administration), Matthew Wester (forensic accountant), Jason Schofield (former CAHA Executive Committee Member), Michelle Peterson (former CAHA Executive Committee Member), Peter Schafer (former General Counsel for CAHA), and Bill Brierly (current CAHA Treasurer and CAHA Executive Committee Member). The Court received the following exhibits at trial: Plaintiff's Exhibits 1, 2, 3, 4, 5, 6, 8, 11, 12, 13, 14, 15, 16, 17, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 46, 48, 49, 50, 51, and 52. The parties filed their respective Proposed Findings of Fact and Conclusions of Law following trial.

The Court now makes the following findings of fact and conclusions of law from the Court Trial and enters judgment in this matter accordingly.

II. FINDINGS OF FACT

1. CAHA is a nonprofit organization that governs Colorado's amateur hockey programs as an affiliate of USA Hockey, Inc. ("USA Hockey"). *Ex. A*, 25:4-19, 102:17-103:4.

2. Mr. Kanai was President of CAHA from approximately 2010 until May of 2023. *Ex. B*, 4:6-8.

3. Pursuant to USA Hockey and CAHA's Affiliate Agreement, USA Hockey granted CAHA rights to conduct certain acts to regulate the sport of amateur ice hockey in Colorado, including, but not limited to, CAHA's assessment of team and individual fees and operation of tournaments, games and events sponsored by CAHA. *See Ex. 39*, § I.

4. Mr. Kanai signed the Affiliate Agreement on behalf of CAHA on January 13, 2021. *Ex. 39*, p. 6.

5. The Affiliate Agreement required that certain voting and governance principles be included in CAHA's Bylaws. *Ex. 39*, § III; *Ex. A*, 25:20-26:3, 104:10-109:19.

6. The Affiliate Agreement also required that CAHA maintain its tax exempt (nonprofit) status under Section 501(c)(3) of the Internal Revenue Code. *Ex. 39*, § III(I).

7. Pursuant to CAHA's Bylaws, CAHA's Executive Committee was responsible for day-to-day management and administration of the nonprofit and the President was not allowed to act independently without CAHA's Executive Committee's approval or subsequent ratification. *Ex. 1*, § V(C).

8. From early 2021 through May 2023, Mr. Kanai began operating CAHA-sponsored events through his private entity ISEM without authorization from and without informing CAHA's Executive Committee, and caused the funds related to these activities to be deposited into his ISEM bank account. *Ex. B*, 22:9-20, 23:22-24:1, 26:4-6, 38:3-40:11; *Ex. 11*; *Ex. A*, 77:12-23, 116:23-117:4, 118:2-21; *Ex. 3*.

9. Mr. Kanai was the owner and operator of ISEM and was the sole signatory on ISEM's accounts. *Ex. 3*; *Ex. B*, 19:21-22:8.

10. Players and teams had to pay registration fees to play on CAHA-sponsored teams, play in CAHA-sponsored tournaments, and attend CAHA-sponsored combines. *Ex. B*, 22:9-12, 31:13-32:3; *Ex. A*, 122:21-24.

11. Team Colorado was a CAHA-sponsored group of teams. *Ex. 3*; *Ex. B*, 64:5-13; *Ex. 31*.

12. Mr. Kanai began operating three Team Colorado girls hockey teams through his private entity ISEM without authorization from and without informing CAHA. *Ex. 3; Ex. A*, 87:3-13, 118:2-21; *Ex. B*, 64:5-13.

13. Mr. Kanai caused the registration fees for these Team Colorado teams to be deposited into his ISEM account. *Ex. 3; Ex. B*, 64:5-13.

14. The national tournament was a tournament awarded to CAHA by USA Hockey. *Ex. A*, 75:2-13, 116:23-117:4.

15. Mr. Kanai caused the national tournament to be operated through ISEM without authorization from CAHA's Executive Committee. *Ex. B*, 20:23-21:8, 22:2-4.

16. Mr. Kanai caused the registration fees from the national tournament to be deposited into his ISEM account. *Ex. B*, 21:9-20.

17. CAHA sponsored state tournaments. *Ex. A*, 116:25-117:4; *Ex. 3; Ex. 3I*.

18. Mr. Kanai caused these state tournaments to be operated through ISEM without authorization from and without informing CAHA's Executive Committee. *Ex. 3; Ex. B*, 24:12-14; *Ex. C*, 113:4-11.

19. Mr. Kanai caused the registration fees from the state tournaments to be deposited into his account at ISEM. *Ex. B*, 26:4-6.

20. CAHA sponsored and operated a sports testing combine. *Ex. A*, 119:24-4; *Ex. B*, 26:13:20.

21. Mr. Kanai began operating the sports testing combine through ISEM without authorization from and without informing CAHA's Executive Committee. *Ex. B*, 26:13-27:19, 52:10-13; *Ex. 3*.

22. Mr. Kanai caused the registration fees for the sports testing combines to be deposited into his account at ISEM. *Ex. 3*; *Ex. 11*; *Ex. 15*; *Ex. B*, 43:21-23, 60:10-15; *Ex. 11*.

23. The registration fees from the Team Colorado teams, the tournaments, and the sports testing combine deposited into Mr. Kanai's ISEM account totaled in excess of \$1,000,000. *Ex. 11*.

24. In connection with the CAHA tournaments, CAHA entered into a Master Agreement with Traveling Teams. *Ex. 8*; *Ex. B*, 67:17-68:14.

25. Pursuant to that Master Agreement, Traveling Teams was to pay CAHA a \$10 rebate per consumed night and Traveling Teams would "issue check for full payment to Colorado Amateur Hockey Association within 45 days of the completion of the tournament." *Ex. 8*.

26. Mr. Kanai signed the Master Agreement on behalf of CAHA. *Ex. 8*.

27. Instead of allowing the Traveling Teams checks to go to CAHA as required by the agreement, Mr. Kanai caused the Traveling Teams checks to be written out to his own d/b/a of ISEM without authorization from CAHA's Executive Committee. *Ex. B*, 65:1-66:12, 70:3-10.

28. The total amount of payments from Traveling Teams to ISEM (account 8226) was \$96,100. *Ex. 15*.

29. Mr. Kanai executed a contract in his name with Northwest Designs to provide apparel for CAHA tournaments. *Ex. B*, 61:3-15.

30. Northwest Designs provided rebates totaling \$79,771.98 for the apparel sold at tournaments, which were deposited into Mr. Kanai's ISEM account without authorization from CAHA's Executive Committee. *Ex. 15; Ex. B, 60:24-62:6.*

31. Mr. Kanai paid the expenses for the teams and tournaments with the funds that were deposited into his ISEM bank account. *Ex. 3; Ex. B, 64:15-16, 66:11-12, 70:5-6, 129:25-130:1.*

32. Mr. Kanai deposited \$181,396.58 from his ISEM account into his personal accounts without authorization from and without informing CAHA's Executive Committees. *Ex. A, 154:14-158:15; Ex. B, 50:9-12; Ex. 17; Ex. 46; Ex. 48.*

33. Mr. Kanai spent the funds deposited into his personal accounts from ISEM on personal expenses. *Ex. B, 50:16-19.*

34. Mr. Schofield also received approximately \$180,000 in deposits from ISEM's account into his personal account. *Ex. 11; Ex. B, 50:21-25; Ex. C, 58:24-59:5.*

35. Mr. Kanai had a duty to disclose conflicts of interest. *Ex. 1, § XIII.*

36. Mr. Kanai was required to submit a conflict of interest form. *Ex. A, 52:3-13; Ex. 34.*

37. Mr. Kanai did not disclose his operation of ISEM on his conflict of interest form. *Ex. A, 52:3-13; Ex. 34.*

38. In or around late 2022 and early 2023, USA Hockey members became concerned that Mr. Kanai was operating CAHA-sponsored activities through an entity outside of CAHA. *Ex. A, 32:15-34:20.*

39. USA Hockey retained an accounting firm to conduct a forensic audit who requested Mr. Kanai provide an accounting of CAHA's finances. *Ex. 37; Ex. 38; Ex. 40.*

40. Mr. Kanai failed to provide an accounting and instead provided a narrative response explaining his operation of ISEM. *Ex. 3; Ex. A, 62:4-11.*

41. In his narrative response, Mr. Kanai admitted he began operating these CAHA-sponsored activities and exercising control over the funds from those activities. *Ex. 3.*

42. In his narrative response, Mr. Kanai represented that he began operating these CAHA-sponsored events and exercising control over the funds from these CAHA-sponsored activities to help facilitate these activities. *Ex. 3.*

43. In his narrative response, Mr. Kanai represented he did not begin operating these CAHA-sponsored activities and exercising control over the funds from these CAHA-sponsored with the goal of making a profit. *Ex. 3.*

44. USA Hockey again requested an accounting for ISEM and the CAHA-sponsored activities. *Ex. 40.*

45. Mr. Kanai again refused to provide an accounting and provided a narrative response. *Ex. 4; Ex. A, 62:4-11.*

46. USA Hockey discovered CAHA had not held an election within the time frame required. *Ex. A, 34:15-17.*

47. USA Hockey appointed a committee to oversee CAHA's elections. *Ex. 38.*

48. In May of 2023, Mr. Smith was elected President of CAHA in an election between him and Mr. Kanai. *Ex. A, 104:8-9, 111:9-20.*

49. Mr. Kanai continued to pay himself from ISEM's bank account even after he was voted out as CAHA's president in May 2023, and after he was on notice of USA Hockey's concerns

about issues with CAHA's operational, governance and financial affairs under his presidency. *Ex. 33, Ex. 36, Ex. 38, Ex. 48; Ex. B, 106:20-107:11.*

50. Mr. Kanai represented that he never had an intention to make profits through his operation of the CAHA related activities. *Ex. 3; Ex. B, 32:10-15.*

51. Contrary to his previous representations, at trial, Mr. Kanai testified that he thought he was entitled to the payments due to his personal efforts. *Ex. B, 53:22-55:7.*

52. Mr. Kanai plainly testified that he did not obtain CAHA's Executive Committee approval to profit from such activities and that CAHA's Executive Committee was not aware Mr. Kanai was profiting from such activities. *Ex. B, 81:24-82:6.*

53. CAHA did not file its Form 990s during the final years of Mr. Kanai's presidency as required. *Ex. A, 113:17-114:2.*

54. Mr. Kanai did not report information to the IRS relating to ISEM's operation of CAHA events. *Ex. A, 91:8-19.*

55. Individuals associated with CAHA and other amateur hockey entities received tickets to Avalanche games through Kroenke Sports Entertainment's ("KSE") Learn to Play Program. *Ex. C, 10:13-11:16.*

56. KSE would send CAHA a check for a lump sum of money and an invoice for Avalanche tickets. *Ex. C, 13:3-10.*

57. CAHA would use the check from KSE to pay for the invoice for Avalanche tickets. *Ex. C, 13:3-10, 39:25-40:7.*

58. Several individuals received the benefit of these Avalanche tickets through the Learn to Play program at no personal costs. *Ex. B*, 83:19-24, 85:1-17, 103:21-104:1, 137:8-10; *Ex. C*, 15:24-16:13, 22:22-23:12, 39:25-40:7, 47:16-17, 81:12-18, 136:10-25.

59. In a CAHA Executive Committee meeting in or around May of 2023, Mr. Smith made statements discussing money that was missing from CAHA and indicating that Mr. Kanai was responsible for this missing money. *Ex. C*, 92:20-93:1.

III. CONCLUSIONS OF LAW

Before addressing CAHA's claims and Mr. Kanai's third-party claims, the Court determines whether certain testimony or exhibits presented at trial should be excluded. The Court then addresses CAHA's claims and Mr. Kanai's third-party claims in turn.

A. Mr. Brierly's Testimony & Exhibit 9

As noted, the parties dispute whether Mr. Brierly's testimony should be stricken from the record and whether Exhibit 9 was admitted at trial. The Court addresses these two issues in turn.

1. Mr. Brierly's Testimony

At trial, Mr. Kanai moved to strike Mr. Brierly's testimony because he remained present in the courtroom in violation of the Court's sequestration order. CAHA asserts the Court already addressed this issue and that Mr. Brierly was permitted to remain present in the courtroom as CAHA's representative. The Court agrees with CAHA.

Though CAHA initially represented that Mr. Brierly would not be called as a witness, CAHA still designated Mr. Brierly as the representative for CAHA. Accordingly, the Court granted

Mr. Kanai's sequestration order with two exclusions: Mr. Smith on behalf of himself as a third-party defendant and Mr. Brierly as a representative of CAHA:

THE COURT: . . . We're set for trial to commence to the bench. Is Plaintiff ready to move forward?

MR. KRYSA: Yes, Your Honor.

THE COURT: And for Defense?

MS. DOYLE: We are, Your Honor, I would ask that all witnesses be sequestered.

THE COURT: Any objection?

MR. KRYSA: No objection.

THE COURT: Sequestration will be ordered. Are there any advisory witnesses? I only ask because you'd introduced a number of folks on your side, Mr. Krysa.

MR. KRYSA: Mr. Smith is going to testify. That's the only witness that will testify on our behalf at that table.¹

THE COURT: Are you asking that he be subjected to sequestration or excluded?

MR. KRYSA: I think he should be allowed to be in the courtroom as -- as a Defendant. Same with Mr. Kanai.

THE COURT: Ms. Doyle, any objection there?

MS. DOYLE: What is the purpose for him being here?

MR. KRYSA: He's a Defendant.

THE COURT: I think, well, Mr. Krysa would be able to answer that. But I think as it relates to the counterclaim as a Defendant similarly to Mr. Kanai here, if I allow Mr. Kanai, it seems only fair to allow him.

¹ For clarity, the Court notes Mr. Brierly was present at CAHA's counsel's table when this statement was made. As such, CAHA represented that Mr. Brierly would not be called as a witness.

MS. DOYLE: He could be a wit -- potential witness on rebuttal. Are you saying you're not going to call him at all?

MR. KRYSA: I -- I think you're confusing Mr. Smith and Mr. Brierly.

MS. DOYLE: Mr. Brierly is an attorney who sits on the board, correct?

MR. KRYSA: Correct. But he is also a representative of CAHA. In my experience, Your Honor, there is -- you -- you are entitled to have a -- a representative of a party in the courtroom during trial.

THE COURT: So what I'll do is order sequestration with those two exclusions. The parties are to just make note of respective witnesses who come in. I don't know the faces of your witnesses. So if you'll just make sure if we need to pause, if you see someone come in, we can always pause the proceedings.

Ex. A, 4:22-6:17.

Despite CAHA's initial representation, CAHA still designated Mr. Brierly as its corporate representative. When Mr. Brierly was called to testify as a rebuttal witness, the Court permitted Mr. Kanai to cross-examine Mr. Brierly on this issue:

MS. DOYLE: -- it -- and I'm sorry to interrupt you, but I thought witnesses were sequestered. And he's been sitting at the table the whole time.

MR. KRYSA: He -- he's a party representative.

THE COURT: You may cross examine him on that point.

MS. DOYLE: Thank you.

Ex. C, 181:18-24. However, Mr. Kanai chose not to do so and did not ask Mr. Brierly any questions with respect to the sequestration order. *See Id.*, 187:190:24.

In his proposed order, Mr. Kanai argues:

Lastly, it is to be noted that CAHA maintained two corporate representatives—Mr. Smith and Mr. Brierley [sic]—at counsel table throughout trial, both of whom actively assisted in trial preparation and testified. Plaintiff failed to disclose Mr. Brierley [sic] as a trial witness until rebuttal, depriving Defendant of the opportunity to invoke Rule 615’s witness sequestration protections.

Mr. Kanai’s Proposed Order, p. 5.

First, CAHA did not maintain two corporate representatives. Mr. Smith was permitted to be present because he is a party who is a natural person. C.R.E. 615(a) (“[t]his rule does not authorize exclusion of (1) a party who is a natural person”). Mr. Brierly was permitted to be present because he is an officer of a party which is not a natural person and he was designated as that party’s representative by its attorney. *Id.* (“[t]his rule does not authorize exclusion of . . . (2) one officer or employee of a party which is not a natural person if that officer or employee has been designated as its representative by its attorney.”). Thus, any failure by CAHA to disclose Mr. Brierly as a trial witness did not deprive Mr. Kanai of the opportunity to sequester Mr. Brierly pursuant to C.R.C.P. 615 because Mr. Brierly could be properly designated as CAHA’s representative and be permitted to be present in addition to Mr. Smith, who was permitted to be present as a party himself.

That said, the Court agrees with Mr. Kanai in that CAHA failed to disclose Mr. Brierly as a witness. CAHA did not list Mr. Brierly as a potential witness in its order of proof. *See Joint Order of Proof* (filed Mar. 25, 2025). As mentioned, on the morning of the first day of trial, CAHA represented that Mr. Brierly would not be testifying. Based on the record before the Court, Mr. Brierly was not timely disclosed as a witness.

Nevertheless, while the Court recognizes the failure to disclose a witness who is a licensed attorney in some circumstances may prejudice the opposing party, in this case the Court finds it was harmless.

“Trial courts have broad discretion in determining whether to allow the late endorsement of witnesses not listed in pretrial orders, and we will not disturb a trial court's ruling absent a showing of an abuse of that discretion.” *Curry v. Brewer*, 569 P.3d 115, 125 (citing *Welsch v. Smith*, 113 P.3d 1284, 1290 (Colo. App. 2005)). “A trial court abuses its discretion if its actions are manifestly arbitrary, unreasonable, or unfair.” *Sch. Dist. No. 12 v. Sec. Life of Denver Ins. Co.*, 185 P.3d 781, 787 (Colo. 2008) (*en banc*) (citing *Colo. Nat'l Bank of Denver v. Friedman*, 846 P.2d 159, 166–67 (Colo. 1993) (*en banc*)). “C.R.C.P. 37(c)(1) allows a court to exclude evidence that was disclosed late unless the late disclosure was either substantially justified or harmless to the opposing party.” *Curry*, 569 P.3d at 125 (citing *Todd v. Bear Valley Vill. Apartments*, 980 P.2d 973, 977 (Colo. 1999)). “In exercising its discretion, a trial court may evaluate any number of factors, such as the importance of the witness's testimony, the party's explanation for their failure to comply with the required disclosure, the potential prejudice to the party against whom the testimony is offered, the availability of a continuance to cure the prejudice, and the extent to which introducing the testimony would disrupt the trial.”² *Id.* (citing *D.R. Horton, Inc.-Denver v. Bischof & Coffman Constr., LLC*, 217 P.3d 1262, 1268 (Colo. App. 2009)).

Here, the Court finds the failure to disclose Mr. Brierly as a witness was harmless because excluding Mr. Brierly's testimony would not change the Court's ruling. Indeed, CAHA does not cite to any of Mr. Brierly's testimony in support of its findings of fact or conclusions of law as related to the claims at issue. *See generally CAHA's Proposed Order*. The only time CAHA cites

² The Court notes, because Mr. Kanai objected to Mr. Brierly's exclusion of the sequestration order but not to his testimony on the basis that CAHA failed to disclose him as a witness, the Court can only address two of these suggested factors. The Court cannot address CAHA's justification for the failure to disclose because, since Mr. Kanai did not object on this basis, CAHA did not have an opportunity to provide a response. The Court also cannot address the availability of a continuance to cure the prejudice or the extent to which introducing the testimony would disrupt the trial because the trial has already occurred. Thus, the Court addresses the importance of the testimony and the potential prejudice to Mr. Kanai, which is minimal if any.

Mr. Brierly's testimony is when addressing the sequestration issue. *See Id.* at 12, n. 11. The entire direct examination of Mr. Brierly consists of seven pages of the over 500 transcript pages of testimony at trial and provided little if any information that was not already testified to. The importance of Mr. Brierly's testimony was minimal, and excluding Mr. Brierly's testimony would not change the Court's ruling. For these reasons, Mr. Kanai will not be prejudice by the Court declining to exclude Mr. Brierly's testimony. The Court therefore finds CAHA's failure to disclose Mr. Brierly as a witness was harmless and this failure does not warrant exclusion of Mr. Brierly's testimony.

2. Exhibit 9

CAHA's Exhibit 9 was purportedly an invoice for Avalanche tickets sent from the Avalanche to CAHA. There is a dispute with respect to whether this exhibit was admitted. The Court agrees with Mr. Kanai that Exhibit 9 was never admitted at trial. *See Minute Order: 4/1/2025 Court Trial Day 1* (issued April 1, 2025).

Though CAHA referenced Exhibit 9 as an admitted exhibit in its closing argument, *see Ex. C*, 200:4-6, referenced Exhibit 9 in its proposed findings of fact, *CAHA's Proposed Order*, p. 8, and its proposed conclusions of law, *Id.* at 20–21, and filed Exhibit 9 into the record titling it in the E-Filing System as "Admitted Trial Exhibit 9", Exhibit 9 was not admitted at trial. Indeed, all three times CAHA offered Exhibit 9, the Court sustained Mr. Kanai's objection for a lack of foundation.

The first time CAHA offered Exhibit 9 during Mr. Smith's testimony, the Court sustained Mr. Kanai's objection for a lack of foundation:

MS. BOEHM: I'd like to move to admit these invoices into evidence.

THE COURT: Any objection as to Exhibit 9?

MS. DOYLE: I'd like a little bit of background information on it because –

THE COURT: What's the objection, Ms. Doyle?

MS. DOYLE: The objection is, I think they're contrived. I don't think they're reliable. Should have a Kroenke person out here testifying to those.

THE COURT: As to foundation, sustained.

Ex. A, 128:16-25.

The second time CAHA offered Exhibit 9, this time during Mr. Schofield's testimony, the Court agreed with Mr. Kanai's objection in that Mr. Schofield only stated he recognized one page of Exhibit 9. Instead of moving to admit that one page of Exhibit 9, CAHA attempted to lay foundation for the entire document:

MS. BOEHM: I'd like to move to admit Exhibit 9 into evidence as a business record.

THE COURT: Any objection?

MS. DOYLE: The one page that he recognized, yes.

THE COURT: That was my clarification, Ms. Boehm. He --

MS. BOEHM: Okay.

THE COURT: -- stated he only recognized page nine. So is that the only page that you're moving to admit?

MS. BOEHM: We'll go ahead and go through the entire document.

THE COURT: So I'll sustain the objection now.

Ex. C, 41:1-13.

The third time CAHA offered Exhibit 9, again during Mr. Schofield's testimony the Court again sustained Mr. Kanai's objection for a lack of foundation following voir dire by Mr. Kanai's counsel:

MS. BOEHM: So I would move to admit all pages of this document, excluding pages 10, 12, and if you'll scroll up, I believe six was the other one.

UNIDENTIFIED VOICE: Four.

MS. BOEHM: Four.

THE COURT: Any objection?

MS. DOYLE: If I could ask a follow-up question?

THE COURT: If you wish to voir dire, go ahead.

MS. DOYLE: Thank you.

VOIR DIRE EXAMINATION

BY MS. DOYLE:

Q Are -- are those actual invoices that you invoiced CAHA, the ones she's talking about that you identified that look like, are those invoices that came from you?

A I'd have to look at them closer, but I do not recognize any of those that I would have --

Q I'm sorry?

A I'd have to look at them closer, but I didn't recognize any that would have come from me.

Q But those look like similar documents that the Avs would put out without grouping -- or let me strike that. They look similar to invoices that you put out as just a group of tickets, not individuals?

A Correct.

Q But you don't know if you were the person that generated those --

A No, I'd have to look at them closer.

Q -- invoices?

A Like, this one was dated after my termination.

MS. DOYLE: So I am going to renew my objection because he doesn't -- he doesn't know if he is the person that actually generated that invoice. He says it looks like an invoice that's familiar, but he doesn't know if it's an actual invoice because he didn't issue it.

THE COURT: Sustained.

Ex. C, 45:6-25, 46:1-15.

CAHA never moved to admit Exhibit 9 after its third attempt to do so, and this exhibit was never admitted.³ Because Exhibit 9 was not admitted into evidence at trial, the Court does not consider Exhibit 9 in making its ruling.

B. CAHA's Claims Against Mr. Kanai

CAHA asserts claims against Mr. Kanai for civil theft, conversion, breach of fiduciary duty, and unjust enrichment. CAHA had the burden of proving each of its claims by a preponderance of the evidence. C.R.S. 13-25-127(1); *Borer v. Lewis*, 91 P.3d 375, 379 (Colo. 2004) (*en banc*) (“Section 13–25–127(1) provides that ‘the burden of proof in any civil action shall be by a preponderance of the evidence.’”) (quoting C.R.S. 13-25-127(1)). The Court addresses each of CAHA's claims against Mr. Kanai in turn.

³ The Court notes that after CAHA stated in its closing argument that Exhibit 9 had been admitted, Mr. Kanai correctly clarified at the beginning of his closing argument that Exhibit 9, in fact, had not been admitted. *Ex. C*, 205:25-2 (“First of all, I'd like the Court to note that reference was made for an exhibit that was not entered as evidence.”).

1. Civil Theft

“To prevail on a claim for civil theft, a party must prove, by a preponderance of the evidence, that the defendant committed all of the elements of criminal theft.” *In re Estate of Chavez*, 520 P.3d 194, 204 (Colo. App. 2022) (quoting *Black v. Black*, 422 P.3d 592, 607 (Colo. App. 2018) (internal quotation marks omitted). “A person commits civil theft when he (1) knowingly obtained, retained, or exercised control over anything of value of [the plaintiff] without authorization or by threat or deception; and (2) acted intentionally or knowingly in ways that deprived the plaintiff of the thing of value permanently.” *Id.* (quoting C.R.S. § 18-4-401(1)) (internal quotation marks omitted) (citing *Scott v. Scott*, 428 P.3d 626, 633 (Colo. App. 2018)); *see Van Rees v. Unleaded Software, Inc.*, 373 P.3d 603, 608 (Colo. 2016).

Thus, to prevail on its claim for civil theft, CAHA had to prove by a preponderance of the evidence that (i) CAHA had an ownership interest in the funds at issue; (ii) Mr. Kanai knowingly exercised control over, obtained, or retained the funds; (iii) Mr. Kanai so with the intent to permanently deprive the plaintiff of the use or benefit of the funds. *Id.*; *see* Colorado Civil Jury Instruction 32:4; *see also Itin v. Ungar*, 17 P.3d 129, 133 (Colo. 2000) (*en banc*).

i. CAHA’s Ownership Interest in the Funds

The first question is whether CAHA had an ownership interest in the funds that were deposited into ISEM’s account.

“Property or money belongs to another if anyone other than the defendant has a possessory or proprietary interest in it.” *Million v. Grasse*, 549 P.3d 1043, 1051 (Colo. App. 2024) (citing C.R.S. § 18-4-401(1.5)). “A ‘proprietary interest’ is an ownership interest in the subject property.” *Id.* (citing Webster’s Third New International Dictionary 1819 (2002) (“proprietary” means “held

as the property of a private owner”)) (citing Black's Law Dictionary 968, 1332 (11th ed. 2019) (“interest” is a legal or equitable claim to or right in property; “ownership” implies the right to possess a thing, regardless of any actual or constructive control)). If a corporate officer or director usurps a corporate opportunity, the corporation has an equitable interest in the funds usurped by that corporate officer or director. *See In re Marriage of Allen*, 724 P.2d 651, 657 (Colo. 1986) (*en banc*) (“When property has been acquired in such circumstances that the holder of legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee.”) (quoting *Page v. Clark*, 592 P.2d 792, 798 (Colo. 1979) (*en banc*)); *see also Collie v. Becknell*, 762 P.2d 727, 731 (Colo. App. 1988) (“If a corporate officer or director usurps a corporate opportunity, he will be deemed to hold the usurped property in constructive trust for the corporation.”) (citing *Williams v. Stirling*, 583 P.2d 290 (Colo. App. 1978)) (citing *Carper v. Frost Oil*, 211 P. 370 (Colo. 1922))).

The funds at issue include registration fees for teams, tournaments, and combines; hotel rebates; and apparel rebates. The testimony presented at trial demonstrated by a preponderance of the evidence that CAHA had an ownership interest in all of these funds.

Pursuant to CAHA’s affiliate agreement with USA Hockey, CAHA had rights over the operation of amateur hockey in Colorado, including the operation of hockey teams, tournaments, and combines. According to Mr. Kanai’s own statements to USA Hockey, CAHA’s meeting minutes, as well as testimony from Mr. Jorgensen, Ms. Manchke, and Mr. Smith, the Team Colorado teams, the hockey tournaments, and the combines, all of which Mr. Kanai began operating through ISEM, were CAHA activities.

CAHA had an ownership interest in the funds because these funds were generated by CAHA activities. The state tournaments were CAHA events. The national tournaments were

CAHA events. The combines were CAHA events. The Team Colorado teams were CAHA teams. Because the funds deposited into ISEM's account were generated by CAHA activities, CAHA had an ownership interest in the funds deposited into ISEM's account.

Moreover, CAHA had an express contractual ownership interest in some of the funds which Mr. Kanai caused to be deposited into his ISEM accounts. For example, CAHA was entitled to hotel rebates pursuant to the contract between CAHA and Traveling Teams. Mr. Kanai caused the hotel rebates which were contractually required to be paid to CAHA to instead be paid to his ISEM account.

To any extent CAHA did not have control over or an express contractual interest in the funds, that is only because Mr. Kanai, without authorization, caused the funds from the CAHA events to be deposited into the ISEM bank account and caused contracts to be executed in his or ISEM's name rather than CAHA's. As the Court addresses later in this Order, Mr. Kanai taking this action without authorization was a breach of his fiduciary duty to CAHA. *See infra* § III(B)(3). Thus, put differently, the only reason CAHA did not have control over or an express contractual interest in any portion of the funds is because Mr. Kanai breached his legal obligation to CAHA and failed to maintain the funds from CAHA events within CAHA. Mr. Kanai cannot avoid liability for CAHA's civil theft claim on this basis because "a party may not defeat legal relief by relying on his own breach of legal obligations." *Million*, 549 P.3d at 1052, note 3 (disagreeing with the trial court's finding that no civil theft claim regarding trust funds was available based on the fact that no trust account was created because the defendant breached his legal obligation to create the trust account and could not avoid liability based on that breach).

Mr. Kanai's only argument at trial for why CAHA did not have an ownership interest in these funds is because ISEM operated the tournaments, not CAHA. However, Mr. Kanai repeatedly

admitted that these events could have been operated by CAHA as well as that he never received authorization to operate these events through ISEM, and the evidence presented at trial, including Mr. Kanai's own statements, demonstrated by a preponderance of the evidence that these were all CAHA activities.

Even if the Court found Mr. Kanai's assertion that these events were not CAHA events to be true, which it does not, CAHA would still have an equitable claim to the funds because, in that case, Mr. Kanai would have acquired them through usurping CAHA's corporate opportunity. Regardless of who owned the funds, all of the amateur hockey events Mr. Kanai operated were clearly within CAHA's corporate purview because they were all amateur hockey events in Colorado. Mr. Kanai could not operate these events without authorization from CAHA. By operating these amateur hockey events, even if they were not CAHA events, Mr. Kanai would still have usurped CAHA's corporate opportunity and CAHA would still have an equitable claim to the funds. Thus, even taking Mr. Kanai's assertion that these events were not CAHA events as true, CAHA would still have an equitable claim to, and thus an ownership interest in, any funds which Mr. Kanai acquired by usurping CAHA's corporate opportunities. Regardless, the testimony presented proved by a preponderance of the evidence that all of the activities ISEM operated were indeed CAHA activities.

The fact that other entities operated amateur hockey events outside of CAHA is immaterial because, again, Mr. Kanai operating amateur hockey events through ISEM without authorization was a breach of his fiduciary duty, and the events Mr. Kanai operated through ISEM were CAHA events. Mr. Kanai could have operated events through ISEM and outside of CAHA, but he needed authorization to permissibly do so. CAHA does not have an ownership interest in the funds simply because they were generated from amateur hockey events in Colorado. CAHA has an ownership

interest in the funds because they were generated by CAHA events which Mr. Kanai operated through his own private entity in violation of his fiduciary obligations to CAHA.

Because the registration fees for teams, tournaments, and combines; hotel rebates; and apparel rebates deposited into ISEM's account were generated by CAHA events or activities, CAHA had an ownership interest in the funds.

ii. Mr. Kanai's Exercise of Control Over the Funds

The second question is whether Mr. Kanai exercised control over, obtained, or retained the funds which CAHA has an ownership interest in.

It was undisputed at trial that Mr. Kanai exercised control over, obtained, and retained the funds through the ISEM accounts. Mr. Kanai wholly owned and operated ISEM. Mr. Kanai was the sole signatory on ISEM's bank account. Mr. Kanai caused the funds to be deposited into ISEM's bank account. Mr. Kanai caused some of the funds to be deposited from ISEM into Mr. Kanai's personal bank account. Mr. Kanai retained the funds deposited from ISEM into his personal account and spent those funds on personal benefits. By Mr. Kanai's own admissions, Mr. Kanai exercised control over all of the funds in ISEM's account, personally obtained the funds deposited into his personal bank account, and retained the funds deposited from ISEM into Mr. Kanai's personal bank account. CAHA therefore proved this element of its civil theft claim by a preponderance of the evidence.

iii. Mr. Kanai's Intent

Having found that CAHA has an ownership interest in the funds and that Mr. Kanai exercised control over the funds, the final question is whether Mr. Kanai intended to permanently deprive CAHA of the benefit of the funds.

“[C]ivil theft, like criminal theft, requires the specific intent of the defendant to permanently deprive the owner of the benefit of the property.” *Scott v. Scott*, 428 P.3d 626, 633 (Colo. App. 2018); *Van Rees*, 373 P.3d at 608 (“We have held that the statute requires, inter alia, ‘the specific intent to permanently deprive the owner of the benefit of property.’”) (quoting *Itin v. Ungar*, 17 P.3d 129, 134 (Colo. 2000) (*en banc*)). “To prove civil theft a plaintiff . . . must prove one of five alternative culpable mental states” under C.R.S. section 18-4-401(1). *Franklin Drilling & Blasting, Inc. v. Lawrence Constr. Co.*, 463 P.3d 883, 887 (Colo. App. 2018) (citing C.R.S. § 18-4-401(1)(a)–(e)). A defendant possesses the requisite intent if he “intends to deprive the other person permanently of the use or benefit of the thing of value; [or] . . . [k]nowingly uses, conceals, or abandons the thing of value in such manner as to deprive the other person permanently of its use or benefit.” C.R.S. § 14-4-401(1)(a)–(b). “The ‘knowingly uses’ element does not require that the defendant have a ‘conscious objective to deprive another person of the use or benefit of the construction trust funds, but instead requires the [defendant] to be aware that his manner of using the trust funds is practically certain to result in depriving another person of the use or benefit of the funds.’” *Franklin Drilling & Blasting, Inc.*, 463 P.3d at 888 (remanding to trial court because trial court failed to consider whether the defendant’s intent met the culpable mental state set forth in C.R.S. section 14-4-401(1)(b) sufficient to support the plaintiff’s civil theft claim).

There was credible testimony demonstrating that CAHA received the benefit of much of the funds deposited into ISEM’s account, which totaled over \$1,000,000. With respect to the funds ISEM paid toward expenses and other matters to facilitate the CAHA events, it does not appear by a preponderance of the evidence that Mr. Kanai intended to permanently deprive CAHA of the benefit of these funds.

That said, CAHA does not argue that Mr. Kanai is liable for civil theft for the over \$1,000,000 deposited into ISEM's bank account. Instead, CAHA asserts Mr. Kanai is liable for civil theft for the \$181,396.58 Mr. Kanai deposited from ISEM into his personal account. With respect to the funds Mr. Kanai deposited from ISEM into his personal account, CAHA proved by a preponderance of the evidence that Mr. Kanai deposited these funds into his personal account with the intent to permanently deprive CAHA of the benefit of these funds.

Mr. Kanai both acted intentionally to permanently deprive CAHA of the benefit of the funds and knowingly used the funds in a manner that was practically certain to permanently deprive CAHA of the benefit of the funds. Mr. Kanai intentionally deposited the funds from ISEM into his personal account with the intent to use them for his personal benefit rather than for CAHA's benefit. Mr. Kanai demonstrated this intent by testifying at trial that he believed he had a right to personally profit from his operation of the events. Based on Mr. Kanai's own testimony, he deposited the funds into his personal account with the specific intent to use them for himself and to permanently deprive CAHA of the benefit of the funds. Mr. Kanai used the funds for personal benefit, precluding CAHA from receiving the benefit of these funds. Mr. Kanai knew using these funds in this manner for his personal benefit was practically certain to permanently deprive CAHA of the benefit of these funds, of course, because CAHA could not receive a benefit from these funds once they were spent on Mr. Kanai's personal use.

Mr. Kanai exercised control over the CAHA's funds by placing them in the ISEM account, personally obtained them by depositing the funds from ISEM into his personal account, and retained the funds for his own personal use with the intent to permanently deprive CAHA of the benefit of the funds. Mr. Kanai was aware using the funds for his personal use was practically certain to deprive CAHA of the benefit of the funds by spending the funds on his own personal

use. CAHA therefore proved by a preponderance of the evidence that Mr. Kanai exercised control over, obtained, and retained the funds with the intent to permanently deprive CAHA of the benefits of the funds and in a manner he knew was practically certain to deprive CAHA of the benefit of the funds.

Because CAHA has an ownership interest in the \$181,396.58 deposited from ISEM's account into Mr. Kanai's personal account, Mr. Kanai exercised control over, obtained, and retained the \$181,396.58 deposited from ISEM into his personal account; and Mr. Kanai exercised control over, obtained, and retained these funds with the intent to permanently deprive CAHA of the benefit of these funds, Mr. Kanai is liable to CAHA for civil theft for the \$181,396.58 Mr. Kanai deposited from ISEM into his personal account.

iv. Damages for CAHA's Civil Theft Claim

"If all of the elements of civil theft have been proved by a preponderance of the evidence, the trial court lacks discretion to decline to award treble damages." *In re. Chavez*, 520 P.3d at 205 (citing *Franklin Drilling & Blasting, Inc.*, 463 P.3d at 888 n. 5 (Colo. App. 2018) ("In *In re Dorland*, [374 B.R. 765 (Bankr. D. Colo. 2007),] the court held that it had discretion to decline an award of treble damages under the civil theft statute. 347 B.R. at 780. We disagree because nothing in the civil theft statute confers such discretion on a trial court, if all the elements of civil theft have been proved by a preponderance of the evidence. [C.R.S.] § 18-4-405.").

CAHA proved all the elements of civil theft by a preponderance of the evidence and demonstrated Mr. Kanai is liable for \$181,396.58 in damages for civil theft. The Court therefore must award treble damages in favor of CAHA, and Mr. Kanai is liable for \$544,189.74 in damages

on CAHA's civil theft claim. CAHA is also entitled to recover attorney fees and costs. C.R.S. § 18-4-405.

2. Conversion

CAHA's second cause of action for conversion is pled in the alternative to its first cause of action. Because the Court found in favor of CAHA on its civil theft claim, it does not award CAHA damages on its conversion claim.

However, the Court still finds that CAHA established its claim for conversion by a preponderance of the evidence. The fact that CAHA met the first two elements of its civil theft claim: that Mr. Kanai exercised control over funds which CAHA had an ownership interest in, necessarily means that CAHA also proved its conversion claim by a preponderance of the evidence. *See Itin*, 17 P.3d at 135 n. 10 ("Common-law conversion is 'any distinct, unauthorized act of dominion or ownership exercised by one person over personal property belonging to another.' ") (quoting *Byron v. York Inv. Co.*, 296 P.2d 742, 745 (Colo. 1956) (*en banc*)). Where conversion and civil theft differ is that civil theft requires the additional element of a specific intent to permanently deprive the owner of the benefit of the property while conversion does not. *See Id.* ("[Conversion] is distinct from the crime of theft in that it does not require that a wrongdoer act with the specific intent to permanently deprive the owner of his property."); *see also Scott*, 428 P.3d at 634 ("Unlike civil theft, conversion *does not* require that the converter act with the specific intent to permanently deprive the owner of his or her property.") (emphasis in original).

By exercising control over the \$181,396.58 of CAHA's funds deposited into his personal accounts without authorization, Mr. Kanai committed conversion. Because CAHA pled its

conversion claim in the alternative to its civil theft claim, and the Court finds in favor of CAHA on its civil theft claim, it awards CAHA no damages on its civil theft claim.

3. Breach of Fiduciary Duty

CAHA's third cause of action is for breach of fiduciary duty.

"The breach of fiduciary duty cause of action is a tort to remedy economic harm suffered by one party due to a breach of duties owed in a fiduciary relationship." *Accident & Injury Med. Specialists, P.C. v. Mintz*, 279 P.3d 658, 663 (Colo. 2012) (*en banc*) (citing *Town of Alma v. Azco Constr., Inc.*, 10 P.3d 1256, 1263 (Colo. 2000) (*en banc*)) (citing Restatement (Second) of Torts § 874 (1979)). "To recover on a claim for breach of fiduciary duty, 'a plaintiff must prove: 1) that the defendant was acting as a fiduciary of the plaintiff; 2) that he breached a fiduciary duty to the plaintiff; 3) that the plaintiff incurred damages; and 4) that the defendant's breach of fiduciary duty was a cause of the plaintiff's damages.'" *In re. Chavez*, 520 P.3d at 203 (quoting *Graphic Directions, Inc. v. Bush*, 862 P.2d 1020, 1022 (Colo. App. 1993)).

"A prerequisite to finding a fiduciary duty is the existence of a fiduciary relationship." *Moses v. Diocese of Colorado*, 863 P.2d 310, 321 (Colo. 1993) (*en banc*). "A fiduciary relationship exists between two persons when one is under a duty to act or give advice for the benefit of the other on matters within the scope of the relationship." *Rocky Mountain Expl., Inc. v. Davis Graham & Stubbs LLP*, 420 P.3d 223, 235 (Colo. 2018) (citing *Mintz*, 279 at 663); see Colorado Civil Jury Instruction 26:2 ("A fiduciary relationship exists whenever one person is entrusted to act for the benefit of or in the interests of another and has the legal power to do so.") (citing accord).

Under Colorado law, directors and discretionary officers of a nonprofit corporation are required to "act in good faith, with the care an ordinarily prudent person in a like position would

exercise under similar circumstances, and in a manner the officer reasonably believes to be in the best interest of the nonprofit corporation”. *Hartman v. Community Responsibility Center, Inc.*, 87 P.3d 202, 204 (Colo. App. 2003) (citing C.R.S. § 7-128-401). This fiduciary duty includes a duty of care, see *Command Commc'ns, Inc. v. Fritz Companies, Inc.*, 36 P.3d 182, 188 (Colo. App. 2001) (“A fiduciary's obligations include the duty to exercise reasonable care and skill.”) (citing *Destefano v. Grabrian*, 763 P.2d 275 (Colo. 1988) (*en banc*)), and a duty of loyalty. See *Mintz*, 279 P.3d at 663 (a “fiduciary [has] a duty to act with utmost loyalty on behalf of, and for the benefit of, the other party”) (citing *Bernhard v. Farmers Ins. Exch.*, 915 P.2d 1285, 1289 (Colo. 1996) (*en banc*)).

Section V.C of CAHA’s Bylaws provides:

1. The President shall preside at all meetings of the CAHA Board and the CAHA Executive Committee. The President may order the calling of Special Meeting of the Board of Directors or Committees of the CAHA. The President shall be ex-officio member of all committees of the CAHA and shall not have any vote at any meetings of the committees with the exception of the Executive Committee.

2. The President shall, when necessary, exercise all duties and powers of the Board of Directors and Executive Committee when it is impractical to call a Special Meeting; subject to ratification of the Executive Committee and/or the Board of Directors. The President shall represent the CAHA on all matters and meetings of USA Hockey, Inc.

...

8. Executive Committee shall be responsible for the day-to-day management and administration of the affairs of CAHA.

Pl.’s Ex. 1. As President of CAHA, Mr. Kanai was required to disclose any conflicts of interest.
Id.

Pursuant to his role as president of CAHA, Mr. Kanai had to adhere to CAHA’s Bylaws and had a fiduciary relationship with CAHA. Mr. Kanai had a fiduciary duty to CAHA to exercise

reasonable skill and care in his role as president and to act with the utmost loyalty on behalf of, and for the benefit of, CAHA, just as any other officer or director of a corporation.

The evidence at trial showed that Mr. Kanai unilaterally decided to operate CAHA-sponsored hockey tournaments, girls hockey teams, and sports testing combines through his wholly-owned entity ISEM. Mr. Kanai admitted that he did not get CAHA Executive Committee approval to take over these CAHA activities. Mr. Kanai operating these CAHA-sponsored events without the Executive Committee's authorization was a breach of his fiduciary duty to CAHA.

Mr. Kanai admitted at trial that he modified the registration platforms to direct the fees to be paid into ISEM's bank account without authorization from the Executive Committee. Mr. Kanai also admitted at trial that he caused hotel rebates and apparel rebates from tournaments to be deposited into his account without the Executive Committee's authorization. Mr. Kanai causing the funds from CAHA events to be deposited into his private entity's account without authorization was a breach of his fiduciary duty.

Mr. Kanai failed to disclose his operation of ISEM on his conflict of interest form. Mr. Kanai failing to disclose this conflict of interest was a breach of his fiduciary duty.

Mr. Kanai refused to comply with requests to provide CAHA and USA Hockey with records relating to his private company's operation of CAHA events. Mr. Kanai affirmatively represented to CAHA and USA Hockey that his priority was not to make a profit. However, Mr. Kanai was profiting from these events. Mr. Kanai misrepresenting the fact that he was making a profit from his operation of CAHA-sponsored events was a breach of fiduciary duty to CAHA.

Though Mr. Kanai initially represented that his goal was not to make a profit from his operation of ISEM and claimed that ISEM was not designed for profit, Mr. Kanai admitted at trial that he did profit through his unauthorized and undisclosed operation of CAHA events through his

private entity ISEM. ISEM's bank records reflect that Mr. Kanai paid himself at least approximately \$181,396.58 in funds from ISEM's bank account directly into two of his personal accounts. Mr. Kanai admitted that this amount is the profit he received from the operation of CAHA-sponsored events. Mr. Kanai profiting from his operation of CAHA-sponsored events without authorization was a breach of his fiduciary duty to CAHA.

At trial, despite his representations to CAHA and USA Hockey that his goal was not to make a profit, Mr. Kanai claims that he thought he was entitled to profits from his operation of the sports testing combine. This assertion does not negate Mr. Kanai's clear breach of his fiduciary duties to CAHA and is unpersuasive for two reasons.

First, despite Mr. Kanai's testimony to the contrary, the evidence showed that the sports combines were CAHA-sponsored events. Even if Mr. Kanai improved the combine by operating it through ISEM or adding a sports testing component as he asserts, this was still a CAHA-sponsored event that Mr. Kanai had no right to operate or profit from without CAHA's consent.

Second, Mr. Schofield and Mr. Kanai's testimony regarding funds earned through sports testing is inconsistent. Even under the most generous calculation based on their estimates does not even come close to \$360,000 that they transferred to themselves for personal use.⁴ Mr. Kanai's testimony that the over \$180,000 in profit he made was solely from sports testing was simply not credible and not supported by the record. Regardless, Mr. Kanai was not authorized to profit from the sports testing combine, and doing so was a breach of his fiduciary duty.

⁴ Mr. Schofield and Mr. Kanai profited \$360,000 between 2020-2023. *Ex. B*, 50:21-51:7, 53:22-25, 55:4-7. Mr. Schofield testified that the goal was to make \$25 off of each player. *Ex. C*, 63:6-11. Mr. Kanai did not introduce any documentary evidence of the number of players that participated in sports testing each year but did testify that there were just short of 500 players that attended the combine each year. *Ex. B*, 28:20-22. Mr. Schofield estimated that 500-800 players participated in 2023. *Ex. C*, 71:19-22. Even adopting Mr. Schofield's high-end estimate of 800 players each year, this still would only result in profits of \$20,000 each year if they met their goal of \$25/player.

The evidence demonstrating that Mr. Kanai breach his fiduciary duties to CAHA is clear and numerous. Mr. Kanai began operating CAHA events through his private entity without authorization in breach of his fiduciary duty. Mr. Kanai caused the funds from CAHA events to be deposited into his private entity's account without authorization in breach of his fiduciary duty. Mr. Kanai failed to disclose his operation of ISEM in breach of his fiduciary duty. Mr. Kanai refused to provide an accounting to CAHA and USA Hockey and failed to disclose that he was profiting from his operation of ISEM in breach of his fiduciary duty. Mr. Kanai profited from his operation of ISEM without authorization in breach of his fiduciary duties.

Mr. Kanai's breach of his fiduciary duties caused CAHA damages because Mr. Kanai deprived CAHA of at least \$181,396.58 of the funds generated by these events. Mr. Kanai deposited these funds into his personal accounts and used them for his own personal benefit. Any profit from the CAHA events should have been held for the benefit of CAHA. By depositing \$181,396.58 of the funds into his personal account and depriving CAHA of the benefit of these funds, Mr. Kanai caused CAHA \$181,396.58 in actual damages.

As president of a nonprofit, Mr. Kanai operating CAHA events without authorization and profiting from these events without disclosing that fact to CAHA was a clear breach of his fiduciary duties. Mr. Kanai's breach caused CAHA damages because it deprived CAHA of \$181,396.58 of the funds generated by these events. Accordingly, CAHA proved by a preponderance of the evidence that Mr. Kanai breached his fiduciary duties to CAHA and caused CAHA damages in the amount of \$181,396.58. Mr. Kanai is therefore liable to CAHA in the amount of \$181,396.58 on CAHA's breach of fiduciary duty claim.

4. Unjust Enrichment

CAHA's fourth and final claim against Mr. Kanai is for unjust enrichment.

“Unjust enrichment is a quasi-contractual, equitable remedy designed to undo a benefit conferred on one party at the unfair expense of another party.” *Pulte Home Corp., Inc. v. Countryside Cmty. Ass’n, Inc.*, 382 P.3d 821, 833 (Colo. 2016) (citing *Lewis v. Lewis*, 189 P.3d 1134, 1141 (Colo. 2008) (*en banc*)). “To prevail on an unjust enrichment claim, a party ‘must prove that (1) the defendant received a benefit (2) at the plaintiff’s expense (3) under circumstances that would make it unjust for the defendant to retain the benefit without commensurate compensation.’” *Id.* (quoting *Lewis*, 189 P.3d at 1141) (internal quotation marks omitted).

On its Unjust Enrichment claim, CAHA asserts Mr. Kanai unjustly enriched himself through his use of Avalanche tickets and by depositing funds from ISEM into his personal account.

i. Avalanche Tickets

CAHA asserts Mr. Kanai was unjustly enriched by using Avalanche tickets without compensating CAHA for the costs of the tickets.

The Court finds CAHA did not prove by a preponderance of the evidence that Mr. Kanai is liable for unjust enrichment for his use of the avalanche tickets. CAHA meets the first element of this claim: that Mr. Kanai received a benefit because he received and used the Avalanche tickets. However, CAHA fails to prove the other two elements by a preponderance of the evidence.

With respect to the second element, CAHA failed to prove by a preponderance of the evidence that Mr. Kanai received this benefit at the expense of CAHA. CAHA’s unjust enrichment claim is primarily supported by the invoice the Avalanche sent to CAHA. However, Exhibit 9 was not admitted at trial. Despite multiple attempts, there was no one that could substantiate the authenticity of the invoice. Though there was testimony suggesting CAHA owes Avalanche a lump sum for tickets, this testimony was not substantiated by an invoice or any other similar evidence,

and there was testimony directly questioning the authenticity of the invoice upon which the testimony regarding any amount purportedly owed to the Avalanche was based. The evidence did not demonstrate by a preponderance of the evidence what amount, if any, which CAHA owes to the Avalanche or that any amount was the direct result of Mr. Kanai.

Even if CAHA had proved the second element of its unjust enrichment claim with respect to the Avalanche tickets, CAHA's unjust enrichment claim in this regard would still fail because CAHA did not prove by a preponderance of the evidence that Mr. Kanai received the benefit of the Avalanche tickets under circumstances that would make it unjust for CAHA to not be compensated.

The testimony regarding KSE's practice for providing tickets through the Learn to Play program suggests Mr. Kanai historically did not receive this benefit at the expense of CAHA. The testimony demonstrated KSE's process for giving CAHA tickets was to send CAHA a check for a lump sum as well as an invoice for that same amount for Avalanche tickets. CAHA would then use the check from KSE to pay the invoice from KSE. Thus, CAHA did not have to pay any of its own money for the tickets. The Court found this testimony credible, and the testimony showed this process was mutually beneficial: CAHA received free tickets for individuals involved in youth amateur hockey and KSE received benefits for recording a higher number of ticket sales.

The testimony also demonstrated that a significant amount of individuals in the youth amateur hockey community received and enjoyed the benefit of free Avalanche tickets. Considering this, and the fact that it was KSE's typical practice to not charge CAHA for the Avalanche tickets, the Court does not find by a preponderance of the evidence that Mr. Kanai received these benefits under circumstances where it would be unjust for him to not compensate CAHA.

If the Avalanche, a billion-dollar NHL organization, is indeed charging CAHA for the most recent tickets used by members of CAHA, a nonprofit youth amateur hockey organization, that appears to the Court based on the evidence to reflect a change in the Avalanche and KSE's process on the matter, not impropriety on the part of Mr. Kanai. The evidence demonstrated that historically the Avalanche and KSE did not charge CAHA for these tickets. The fact that the Avalanche and KSE have switched gears and are now charging CAHA for tickets after the fact, if true, does not create a situation where it would be unjust if Mr. Kanai did not compensate CAHA for those tickets. To the contrary, free Avalanche tickets are a reasonable benefit members of CAHA may receive and based on the testimony did in fact receive.

It is not clear that Mr. Kanai had any knowledge that the Avalanche and KSE would suddenly change course and begin charging a nonprofit for these tickets. As such, even if the Avalanche is charging CAHA for the tickets, and Mr. Kanai thus received the benefit of the tickets at CAHA's expense, the Court does not find by a preponderance of the evidence that Mr. Kanai received this benefit under circumstances where it would be unjust for him not to compensate CAHA for the tickets. Accordingly, the Court finds CAHA fails to prove its unjust enrichment claim by a preponderance of the evidence with respect to the Avalanche tickets.

ii. Funds Deposited from ISEM into Mr. Kanai's Account

CAHA asserts Mr. Kanai unjustly enriched himself by depositing \$181,396.58 of the CAHA funds into his personal account. The Court agrees.

Mr. Kanai received the benefit from the funds deposited into his personal accounts because he spent that money on personal expenses. Mr. Kanai did so at the expense of CAHA because CAHA had an ownership interest in the money. Mr. Kanai received these funds by breaching his

fiduciary duties, and thus, received this benefit where it would be unjust for him not to compensate CAHA.

The Court finds CAHA proved by a preponderance of the evidence that Mr. Kanai is liable for \$181,396.58 in damages on CAHA's unjust enrichment claim for the funds deposited from ISEM into his personal accounts.

5. Mr. Kanai's Nonprofit Immunity Defense

In his proposed order, Mr. Kanai invokes C.R.S. § 13-21-116. Considering the full and correct text of the statute and applying it to the circumstances in this case demonstrates that Mr. Kanai is not entitled to immunity under C.R.S. § 13-21-116.

C.R.S. § 13-21-116 provides, in pertinent part:

(2) (a) To encourage the provision of services or assistance by persons ***on a voluntary basis***, a person shall not be deemed to have assumed a duty of care where none otherwise existed ***when he performs a service or an act*** of assistance, ***without compensation or expectation of compensation***, for the benefit of another person, or adopts or enforces a policy or a regulation to protect another person's health or safety. Such person providing such services or assistance or adopting or enforcing such a policy or regulation shall not be liable for any civil damages for acts or omissions ***in good faith***. Such performance of a service or an act of assistance for the benefit of another person or adoption or enforcement of a policy or regulation for the protection of another person's health or safety shall not create any duty of care with respect to a third person, nor shall it create a duty for any person to perform such a service or an act of assistance nor to adopt or enforce such a policy or regulation.

(b) (I) No member of the board of directors of a nonprofit corporation or nonprofit organization shall be held liable for actions taken or omissions ***made in the performance of his or her duties as a board member*** except for wanton and willful acts or omissions. For purposes of this paragraph (b), "the board of directors of a nonprofit corporation or nonprofit organization" shall include, but not be limited to, the board of directors of a public hospital certified pursuant to section 25-1.5-103 (1)(a), C.R.S.

C.R.S. § 13-21-116 (emphasis added).

This section plainly does not apply to Mr. Kanai's actions in this case because: (1) Mr. Kanai compensated himself for the services provided (and specifically concedes taking profits from his operation of CAHA events); and (2) Mr. Kanai was not performing his duties as a board member of CAHA when he committed the acts causing the damages alleged herein. In fact, he acted directly in contravention of the nonprofit's Bylaws as detailed in Section III.C. *See Gilmore v. Concerned Parents of Pueblo*, 28 P.3d 963, 965 (Colo. App. 2000) (overturning trial court's ruling and holding that C.R.S. § 13-21-116 did not apply because defendant received compensation for services provided); *see also Winkler v. Rocky Mountain Conf. of United Methodist Church*, 923 P.2d 152, 158 (Colo. App. 1995).

6. CAHA's Damages

The Court awards \$181,396.58 in actual damages in favor of CAHA and against Mr. Kanai on CAHA's civil theft claim. The Court also awards treble damages in favor of CAHA and against Mr. Kanai as required, for a total award of \$544,189.74 damages in favor of CAHA and against Mr. Kanai on CAHA's civil theft claim. Additionally, CAHA is entitled to prejudgment interest at a rate of 9% per annum on the \$181,396.58 in actual damages pursuant to C.R.S. section 13-21-101(1). However, CAHA is not entitled to prejudgment interest on the additional treble damages because such damages are purely punitive. *See Seaward Const. Co. v. Bradley*, 817 P.2d 971, 976 (Colo. 1991) (*en banc*) ("Because the purpose of a punitive damage award is not to compensate the plaintiff, and a right to punitive damages does not exist until such damages are awarded by a trier of fact, to allow prejudgment interest on punitive damages would be inconsistent with the compensatory purpose of section 13-21-101."); *see also Becker & Tenenbaum v. Eagle Rest. Co.*, 946 P.2d 600, 603 (Colo. App. 1997) (holding "the treble damages portion of the award [pursuant

to the plaintiff's civil theft claim] was not properly subject to prejudgment interest and that the trial court erred in awarding such interest on that portion of the award").

CAHA's conversion claim is pled in the alternative to its civil theft claim. Because the Court finds in favor of CAHA and awards damages on CAHA's civil theft claim, the Court awards no damages on CAHA's conversion claim.

The Court finds Mr. Kanai is liable for \$181,396.58 in damages in favor of CAHA and against Mr. Kanai on CAHA's breach of fiduciary duty claim. However, these damages are the same damages caused by Mr. Kanai's civil theft and which the Court awarded pursuant to CAHA's civil theft claim. Because CAHA is not entitled to double recovery, Plaintiff is not entitled to a duplicate award of these damages. Accordingly, while the Court finds in favor of CAHA and against Mr. Kanai on CAHA's breach of fiduciary duty claim, it does not enter judgment awarding any additional damages to CAHA on this claim.

The Court finds Mr. Kanai is liable for \$181,396.58 in damages in favor of CAHA and against Mr. Kanai on CAHA's unjust enrichment claim. However, these damages are the same damages caused by Mr. Kanai's civil theft and which the Court awarded pursuant to CAHA's civil theft claim. Because CAHA is not entitled to double recovery, CAHA is not entitled to a duplicate award of these damages. Accordingly, while the Court finds in favor of CAHA and against Mr. Kanai on CAHA's unjust enrichment claim with respect to the funds deposited from ISEM into Mr. Kanai's personal account, it does not enter judgment awarding any additional damages to CAHA on this claim.

This interpretation of CAHA's damages award is inline with CAHA's proper request for damages. CAHA recognizes it is not entitled to double recovery and does not seek duplicative

damages pursuant to its breach of fiduciary duty or unjust enrichment claim. Indeed, the \$544,189.74 amount the Court awards is the same amount CAHA seeks in total damages related to the funds Mr. Kanai deposited from ISEM into his personal account. The only other damages CAHA seeks is the amount for unjust enrichment pursuant to Mr. Kanai's use of the Avalanche tickets, and the Court finds CAHA failed to prove this portion of its unjust enrichment claim by a preponderance of the evidence.

C. Mr. Kanai's Claims Against Mr. Smith

Mr. Kanai asserts third-party claims against Mr. Smith for defamation per se and slander in profession. Mr. Kanai had the burden of proving each of its claims by a preponderance of the evidence.⁵ C.R.S. 13-25-127(1); *Borer*, 91 P.3d 375, 379 (Colo. 2004) (*en banc*) ("Section 13-25-127(1) provides that 'the burden of proof in any civil action shall be by a preponderance of the evidence.'") (quoting C.R.S. 13-25-127(1)).

1. Defamation Per Se

Mr. Kanai's first third-party claim against Mr. Smith is for defamation per se.

"Defamation is a communication holding an individual up to contempt or ridicule that causes the individual to incur injury or damage." *Gordon v. Boyles*, 99 P.3d 75, 78 (Colo. App. 2004) (citing *Keohane v. Stewart*, 882 P.2d 1293 (Colo. 1994) (*en banc*)).

The elements for a cause of action for defamation are:

- (1) a defamatory statement concerning another;
- (2) published to a third party;

⁵ The Court does not necessarily agree that the statement concerns a matter of public or general concern such that Mr. Kanai had to prove the falsity of the statement by clear and convincing evidence. See *McIntyre v. Jones*, 194 P.3d 519, 524 (Colo. App. 2008). That said, the Court notes the bounds of what may be of public or general concern are broad. *Lawson v. Stow*, 327 P.3d 340, 346 (Colo. App. 2014). Regardless, because Mr. Kanai failed to prove the falsity of the statement by the lesser preponderance of the evidence standard, the Court need not undertake an in-depth analysis with respect to whether Mr. Kanai had to prove the falsity of the evidence by clear and convincing evidence.

- (3) with fault amounting to at least negligence on the part of the publisher; and
- (4) either actionability of the statement irrespective of special damages or the existence of special damages to the plaintiff caused by publication.

Han Ye Lee v. Colorado Times, Inc., 222 P.3d 957, 961 (Colo. App. 2009) (citing *McIntyre v. Jones*, 194 P.3d 519, 523–24 (Colo. App. 2008)) (citing *Williams v. Dist. Court*, 866 P.2d 908, 911 n. 4 (Colo. 1993)); *Jogan Health, LLC v. Scripps Media, Inc.*, 565 P.3d 1160, 1168 (Colo. App. 2025).

A publication of libel can be either defamatory per se or defamatory per quod, depending upon the certainty of the defamatory meaning of the publication. If a libelous communication is defamatory per se, damage is presumed, and a plaintiff need not plead special damages.. However, if the statement is defamatory per quod, special damages must be alleged to sustain the claim.

Gordon, 99 P.3d at 79 (internal citations omitted).

“If defamatory meaning is apparent from the face of the publication, or if the subject matter of the publication falls into one of the traditional slander per se categories, then the publication is defamatory per se.” *Id.* (citing *Bernstein v. Dun & Bradstreet*, 368 P.2d 780, 784 (Colo. 1962) (“[T]o constitute libel per se the libelous elements must be clearly expressed. . . And, in determining whether words are libelous they are to be given their ordinary and popular meaning.”)). “The traditional categories of slander per se are imputation of (1) a criminal offense; (2) a loathsome disease; (3) a matter incompatible with the individual's business, trade, profession, or office; or (4) serious sexual misconduct.” *Id.* (citing Restatement (Second) of Torts § 570) (citing *Denver Publ'g Co. v. Bueno*, 54 P.3d 893, 899 n. 9 (Colo. 2002) (*en banc*)).

“[I]f the defamatory meaning may be understood only in reference to extrinsic facts known by the recipient, then the publication is defamatory per quod.” *Id.* “[S]tatements are defamatory per quod when extrinsic facts are necessary to illustrate their libelous nature by way of innuendo.” *Bueno*, 54 P.3d at 898. “A defamatory communication is made about the plaintiff if the recipients

correctly understand, or mistakenly but reasonably understand, that it was intended to refer to the plaintiff.” *Id.* at 900 (citing Restatement (Second) of Torts § 564 (1977)) (citing *Keohane*, 882 P.2d at 1300 n. 10 (Colo.1994)).

“A claim for defamation requires, at a minimum, the publication of a false statement of a defamatory nature.” *Fry v. Lee*, 408 P.3d 843, 848 (Colo. App. 2013) (citing *Burns v. McGraw–Hill Broad. Co.*, 659 P.2d 1351, 1360 (Colo. 1983)). “Publication of a defamatory matter is its communication intentionally or by a negligent act to one other than the person defamed.” *Card v. Blakeslee*, 937 P.2d 846, 850 (Colo. App. 1996); C.R.S. § 13-25-125.5 (“No action for libel or slander may be brought or maintained unless the party charged with such defamation has published, either orally or in writing, the defamatory statement to a person other than the person making the allegation of libel or slander.”); *Bueno*, 54 P.3d at 899 (“publication requires only that some person other than the plaintiff understand the statement.”). “To qualify as a material falsehood, the challenged statement must be false and likely to cause reasonable people to think significantly less favorably about the plaintiff than if they knew the whole truth.” *Fry*, 408 P.3d at 854 (citing *Burns*, 659 P.2d at 1360) (citing *Bustos v. A & E Television Networks*, 646 F.3d 762, 765 (10th Cir. 2011)). “To be defamatory, the statement need only prejudice the plaintiff in the eyes of a substantial and respectable minority of the community.” *Rosenblum v. Budd*, 538 P.3d 354, 365 (Colo. App. 2023) (quoting *Arrington v. Palmer*, 971 P.2d 669, 671 (Colo. App. 1998)).

“If a statement is defamatory per quod, special damages must be alleged to sustain the claim.” *Han Ye Lee*, 222 P.3d at 961. “Special damages are limited to specific monetary losses, if any, which a plaintiff incurs as the result of publication of statements or pictures by a defendant.” *Lind v. O'Reilly*, 636 P.2d 1319, 1321 (Colo. App. 1981).

Mr. Kanai's defamation per se claim is based on Mr. Smith apparently stating that "a lot of money had run through" Mr. Kanai's account.

With respect to the first element, Mr. Kanai fails to demonstrate the statement is defamatory per se. The statement requires extrinsic facts and innuendo to understand its defamatory nature. Funds running into a nonprofit corporation's president's account is not necessarily defamatory per se. There are various reasons a nonprofit president may have funds flowing into his account related to his work with the nonprofit corporation, whether as a matter of convenience or otherwise. So long as the nonprofit corporation president is authorized to do so, holds those funds for the benefit of the corporation, and deposits those funds in accordance with that president's fiduciary duties, there is nothing improper about that president having funds flowing into his account related to the nonprofit corporation. For the statement to be defamatory, one must also be aware of the specific circumstances at play here and insinuate what that statement means. CAHA was facing concerns internally and externally from USA Hockey regarding its finances. These concerns entailed the absence of a significant amount of funds. This statement was made in a CAHA Executive Committee meeting discussing these concerns. With this additional context, one can insulate that the statement means funds are running into Mr. Kanai's account which should not be, those funds are CAHA's, and that is the cause of the financial concerns. However, Mr. Kanai's defamation per se claim is based on Mr. Smith allegedly stating money had run into Mr. Kanai's account, which is not defamatory per se.

While not defamatory per se, the statement is arguably defamatory per quod. In the context of CAHA and USA Hockey raising questions and concerns about the state of CAHA's finances and accounting, stating that a lot of money is flowing into CAHA's President's personal account prejudices CAHA's President in the eyes of CAHA and the amateur hockey community because

it suggests the President, Mr. Kanai, is the cause for the concerns with CAHA's finances and accounting. However, Mr. Kanai asserts a claim for defamation per se, not per quod. Mr. Kanai thus fails to prove the first element of his defamation per se claim: that the nature of the statement is defamatory per se.

Moreover, even if the statement was defamatory in nature, Mr. Kanai failed to prove it was materially false as required to sustain a claim. *Jogan Health, LLC v. Scripps Media, Inc.*, 565 P.3d 1160, 1168 (Colo. App. 2025) ("A plaintiff must prove that the alleged defamatory statement is both false and material.") (citing *SG Ints. I, Ltd. v. Kolbenschlager*, 452 P.3d 1, 6 (Colo. App. 2019)). Mr. Kanai's defamation claim therefore fails at the first step, as "[a] claim for defamation requires, at a minimum, the publication of a false statement of a defamatory nature." *Fry*, 408 P.3d at 848.

With respect to the second element, Mr. Kanai failed to prove by a preponderance of the evidence that this statement was made. The only person who testified to a statement regarding money running through Mr. Kanai's account was Mr. Kanai, who said he did not know whether Mr. Smith had made this statement, but he saw it in the meeting minutes. *Ex. B*, 119:24-25. Ms. Peterson testified that Mr. Smith presented slides "discussing all the money that was missing from CAHA and indicating Randy was responsible for this missing money," *Ex. 92*:23-93:1, but did not testify to any specific statement. Accordingly, Mr. Kanai failed to prove by a preponderance of the evidence that the statement that "a lot of money had run into" Mr. Kanai's account was published.

With respect to the third element, the Court agrees with CAHA in that it need not address this element because the statement is substantially true. *See infra* § III(C)(1)(i)(a) (addressing Mr. Smith's substantial truth affirmative defense). Because the statement was substantially true, Mr. Kanai cannot prove that Mr. Smith published any false statement with the requisite intent necessary for Mr. Kanai to sustain his defamation claim.

With respect to the fourth element, Mr. Kanai fails to prove actionability of the statement or special damages. As discussed, Mr. Kanai fails to demonstrate the state is defamatory per se or that the state is materially false. Thus, Mr. Kanai fails to prove the actionability of the statement irrespective of damages. Mr. Kanai also failed to plead special damages. Mr. Kanai therefore fails to prove the fourth element of his defamation claim.

i. Mr. Smith's Affirmative Defenses

In addition to finding that Mr. Kanai failed to prove the elements of his defamation claim, the Court addresses Mr. Smith's affirmative defenses: that the statement was substantially true and that Mr. Smith was entitled to a qualified privilege. The Court finds that both of these affirmative defenses apply and preclude liability against Mr. Smith for Mr. Kanai's defamation claim.

a. Substantial Truth

"Truth is a complete defense to defamation. However, absolute truth is not required; instead, a defendant need only show substantial truth, that is, 'the substance, the gist, the sting of the matter is true.' " *Gordon*, 99 P.3d at 81. "So, the question is whether 'there is a substantial difference between the allegedly libelous statement and the truth; or, stated differently whether the statement produces a different effect upon the reader than that which would be produced by the literal truth of the matter.' " *SG Ints. I, Ltd. v. Kolbensschlag*, 452 P.3d 1, 6 (Colo. App. 2019) (quoting *Gomba v. McLaughlin*, 504 P.2d 337, 339 (Colo. 1972) (*en banc*)).

The testimony presented at trial demonstrated that the statement that "a lot of money had run into" Mr. Kanai's account was true. Over \$1,000,000 was deposited into Mr. Kanai's ISEM account. Over \$180,000 was deposited from ISEM's account into Mr. Kanai's personal accounts. Thus, it is true that a lot of money had run into Mr. Kanai's account.

b. Qualified Privilege

“A qualified privilege exists for communications by a party with a legitimate interest or duty to persons having a corresponding interest or duty in communications promoting legitimate individual, group, or public interests.” *McIntyre*, 194 P.3d at 530 (quoting *Williams v. Boyle*, 72 P.3d 392, 400 (Colo. App. 2003)). “Where the qualified privilege exists, there is a presumption that the communication was made in good faith without malice.” *Id.* “The plaintiff has the burden of rebutting that presumption, and may do so by proving that the defendant published the statement with malice; that is, knowing the statement is false or communicating it in reckless disregard for its veracity.” *Id.* (citing *Dominguez v. Babcock*, 727 P.2d 362, 366 (Colo. 1986) (*en banc*)) (citing *Williams*, 72 P.3d at 401) (citing *Pittman v. Larson Distributing Co.*, 724 P.2d 1379, 1388–89 (Colo. App. 1986)). “Reckless disregard in this context means ‘a high degree of awareness for probable falsity or serious doubt as to the truth of the statement.’ ” *Dominguez*, 727 P.2d at 366 (quoting Restatement (Second) of Torts § 600 (1977)).

Mr. Smith’s alleged statement was in a CAHA Executive Committee where the Executive Committee shared a fiduciary duty to promote CAHA’s interest. Mr. Smith is therefore entitled to a presumption that the statement was made in good faith. This statement, if made, was substantially true, and there is nothing in the record to rebut the presumption that Mr. Smith made this statement in good faith.

2. Slander in Profession

The Court agrees with CAHA in that Mr. Kanai’s slander in profession claim is duplicative of his defamation per se claim. Slander in the profession is a subset of defamation. *See Pittman v. Larson Distrib. Co.*, 724 P.2d 1379 (Colo. App. 1986). Mr. Kanai fails to prove his slander in

profession claim by a preponderance of the evidence for the same reasons he fails to prove his defamation per se claim.

V. CONCLUSION

CAHA proved each of its claims against Mr. Kanai by a preponderance of the evidence. Mr. Kanai is liable for \$181,396.58 in damages on CAHA's civil theft claim, \$181,396.58 in damages on CAHA's conversion claim, \$181,396.58 in damages on CAHA's breach of fiduciary duty claim, and \$181,396.58 in damages for CAHA's unjust enrichment claim. Because CAHA can only recover these damages once, the Court awards \$181,396.58 in actual damages in favor of CAHA and against Mr. Kanai. Because the Court finds in favor of CAHA on its civil theft claim, it must award treble damages in addition to awarding actual damages. Mr. Kanai is liable for \$544,189.74 in total damages on CAHA's civil theft claim as well as prejudgment interest on the \$181,396.58 in actual damages at a rate of 9% per annum. Mr. Kanai failed to prove either of his third-party claims against Mr. Smith by a preponderance of the evidence and thus is entitled to no relief.

VI. ENTRY OF JUDGMENT ON COLORADO AMATEUR HOCKEY ASSOCIATION'S CLAIMS AGAINST RANDY KANAI

THE COURT ORDERS judgment is entered in favor of Plaintiff Colorado Amateur Hockey Association and against Defendant Randy Kanai on Plaintiff Colorado Amateur Hockey Association's claims for civil theft, breach of fiduciary duty, and unjust enrichment, and awards the following relief to Plaintiff Colorado Amateur Hockey Association:

1. Damages in the amount of **\$544,189.74** in favor of Plaintiff Colorado Amateur Hockey Association and against Defendant Randy Kanai for Colorado Amateur Hockey Association's civil theft claim;

2. Prejudgment interest in favor of Plaintiff Colorado Amateur Hockey Association and against Defendant Randy Kanai in the amount of **\$35,111.42**;

3. Attorney fees and costs for this action;⁶ and

4. Injunctive relief as follows:

a. Defendants Randy Kanai and International Sports Event Management, LLC, are ordered to turn over to Colorado Amateur Hockey Association all Colorado Amateur Hockey Association-related records and intellectual property in the possession of Defendants including all data, records, or personal information (as defined in the Colorado Privacy Act, Colo. Rev. Stat. § 6-1-1303); and

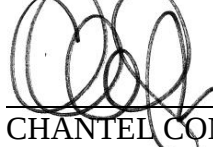
b. Defendants Randy Kanai and International Sports Event Management, LLC, are ordered to cease using all Colorado Amateur Hockey Association-related tradenames, trademarks and intellectual property.

VII. ENTRY OF JUDGMENT ON RANDY KANAI'S THIRD-PARTY CLAIMS AGAINST BRIAN SMITH

THE COURT ORDERS judgment is entered in favor of Third-Party Defendant Brian Smith and against Third-Party Plaintiff Randy Kanai on Randy Kanai's claims for defamation per se and slander in profession. Randy Kanai failed to prove any of his claims by a preponderance of the evidence, and the Court therefore awards no relief to Randy Kanai on his third-party claims.

DONE AND SIGNED: October 7, 2025.

BY THE COURT



CHANTEL CONTIGUGLIA
District Court Judge

⁶ Colorado Amateur Hockey Association shall file a Bill of Costs and motion for attorney fees no later than twenty-one (21) days from the date of this Order pursuant to C.R.C.P. 121 section 1-22.