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APPENDIX A - DISTRICT COURT SUMMARY JUDGMENT ORDER, FILED SEPTEMBER 26, 2023

Case No.: 2:17-cv-00085-JAD-VCF

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Mark Hunt,

Plaintiff

v.

Zuffa, LLC, Ultimate Fighting Championship, Dana White, and Brock Lesnar,

Defendants

Order Granting Defendants' Motions for Summary Judgment and Denying as Moot Motions to Exclude Expert Testimony

[ECF Nos. 219, 220, 223, 231]

Mark Hunt lost a 2016 mixed-martial-arts bout to Brock Lesnar and blames the loss on Lesnar's use of performance-enhancing drugs and the Ultimate

Fighting Championship (UFC) organization's complicity in that anti-doping policy breach. So he sues Lesnar, the UFC, and UFC President Dana White. Though Hunt's lawsuit was dismissed in the early stages of this case, the Ninth Circuit Court of Appeals revived his fraud, battery, aiding-and-abetting battery, and civil-conspiracy claims, permitting Hunt to conduct discovery that might support his theories. With discovery now complete, all defendants move for summary judgment, arguing that Hunt's efforts were for naught as evidentiary holes in each of his claims prevent them from getting to trial. Despite extensive briefing and oral argument, Hunt has been unable to provide the necessary evidentiary support for his theories. So I grant summary judgment in favor of the defendants and again close this case.

Background

I. The negotiations leading up to UFC 200

This case arises from the marquee bout between Mark Hunt and Brock Lesnar at "UFC 200," a mixed-martial-arts (MMA) event held in Las Vegas, Nevada, on July 9, 2016. To set up the fight, UFC President Dana White negotiated with both fighters in the months leading up to it. In March 2016, White and Hunt discussed signing Hunt for a series of UFC bouts through direct messaging on Twitter. White expressed that he wanted Hunt to retire with the UFC, and Hunt

said that he was interested but he "would want [his] next contract to be his last." The following month, the UFC and Hunt entered into a "Promotional and Ancillary Rights Agreement" in which Hunt agreed to participate in six MMA bouts for a fixed purse amount that would increase with each fight. In the ensuing weeks, White told Hunt that he should be in shape for UFC 200 but to keep his potential involvement on the down-low. On May 27, 2016, Hunt asked who he would be fighting. White responded that he was "working on it" and that he would announce an opponent in the next week.

Around the same time, Lesnar was also negotiating with White to fight in UFC 200. Lesnar had retired from the UFC in 2011 and was employed by World Wrestling Entertainment, Inc. (WWE) when he reached out to White. To fight for the UFC, Lesnar needed permission from WWE's president, Vince McMahon. White expressed interest in Lesnar returning, and from March to June 2016, they had several conversations about that possibility. In April, Lesnar began training for his return to the UFC. Lesnar's training camp was not affiliated with the UFC and, aside from White sending Lesnar training gear that he specifically requested, no one at UFC told Lesnar to train or was involved in any aspects of his training.

At first the White-Lesnar negotiations did not

focus on Hunt—in late March, White and Lesnar were discussing other potential opponents. But on June 3, 2016, the UFC formally announced that Lesnar would fight in UFC 200, and Lesnar signed his bout agreement acknowledging that Hunt would be his opponent. Three days later, Hunt inked his own deal, consenting to the Lesnar fight.

II. Hunt's concerns about Lesnar's drug use

But Hunt was apprehensive about this pairing. He testified at his deposition that people were telling him that Lesnar was using performance-enhancing drugs while wrestling for the WWE. The UFC adopted an anti-doping policy in 2015 that requires athletes to submit to drug testing by the United States Anti-Doping Agency (USADA), an independent administrator distinct from the UFC.

So Hunt texted White asking, "Can u make sure he gets tested properly [4 laughing emojis] doesn't matter anyways [5 laughing emojis]." White responded that USADA was "all over him." Hunt expressed gratitude for the pairing, noting that "Brock is such a huge draw card" and exclaiming that he was "very excited" for the fight. A few days later, Hunt texted White, "if [Lesnar] test[s] positive for juicing[,] send me his [pay-per-view] numbers [5 laughing emojis]." The next day, Hunt asked White what would happen if Lesnar tested "positive for cheating?" White responded that "USADA is testing the shit out of him." And in

media interviews before the bout, Hunt repeatedly stated that he believed Lesnar was "juiced to the gills," but Hunt boasted that he was "still going to knock [Lesnar] out.

Two days after Hunt signed his bout agreement, he learned that the UFC had granted Lesnar an exemption from its anti-doping policy's requirement that retired UFC athletes returning to the UFC must be tested for four months before competing. The exemption came from the policy itself, which states that "UFC may grant an exemption to the four-month written notice rule in exceptional circumstances or where the strict application of that rule would be manifestly unfair to an athlete." The exemption had never been invoked before and has not been used since. UFC's Vice President of Athlete Health and Performance Jeff Novitzky explained the decision to the Nevada Athletic Commission via email on July 1, 2016, stating that Lesnar was unable to join the USADA testing pool within four months of competing because he was awaiting WWE's permission to contract with UFC. Novitzky also testified at deposition that USADA was involved in discussions to grant Lesnar the exemption and that USADA supported UFC's decision.

Hunt asked White about the waiver, stating "on a serious not[e] why is he exempt from testing for 4 months w[h]en everyone has to[?]" White explained that the exemption was the result of "getting a deal done with" Vince McMahon and reiterated that

"USADA is testing the shit outta him as we speak. We went after [Lesnar]. He has no problem doing whatever tests the USADA wants." Hunt expressed concern that the exemption would give Lesnar time to get "everything . . . out of his system." White responded, "Brock is not exempt [from] any testing. He will be the most tested athlete on the card. Th[ey] are ALL OVER HIM."

III. UFC 200, Lesnar's drug tests, and the aftermath

Lesnar entered the UFC's testing pool on June 6, 2016. Between then and June 16, USADA tested Lesnar six times; every test came back negative for any prohibited substances.

Lesnar tested three more times, including on July 9, 2016, the night of the fight, but the results of those final tests didn't come back before the bout. Lesnar won the fight, defeating Hunt by unanimous decision after three rounds. Nevertheless, Hunt texted White to thank him for "hooking [Hunt] up with the Brock fight," expressing that, "regardless [of] the result . . . I'm happy Brock is such a famous person he has made me more famous."

But that gratitude evaporated when two of Lesnar's final three tests came back positive for low levels of clomiphene and its metabolite on July 15th. Clomiphene is not a steroid, but it can stimulate the

natural production of testosterone and is thus one of the prohibited substances listed in UFC's anti-doping policy. Hunt messaged White, furious at the results and asking if UFC was "going to make an example of [Lesnar] and give [Hunt] half of [Lesnar's] purse" from the fight. He asked to be released from his UFC contract, repeatedly insisted that White give him Lesnar's purse, and accused White of not doing enough to combat steroid use in the organization. While Lesnar challenged the results and has maintained that he has never taken any banned substances, he agreed to a stipulated judgment with the Nevada Athletic Commission: he was suspended from MMA for one year, had to pay a $250,000 fine, and the result of the bout was changed from a win to a "no contest."

IV. Procedural history of this litigation

Hunt filed this lawsuit in 2017 against Lesnar, White, and Zuffa, LLC, dba Ultimate Fighting Championship for RICO violations, fraud, breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, battery, and civil conspiracy. All of his claims are founded on the theory that White and the UFC knew Lesnar was using performance-enhancing drugs but encouraged him to fight Hunt anyway and induced Hunt to fight a knowingly doping fighter. At the motion-to-dismiss stage, I disposed of all of Hunt's claims except for the implied-breach claim.44 As relevant here, Hunt's fraud claims were dismissed because he failed to adequately

allege that the misrepresentations he complained of were the proximate cause of his economic damages. I dismissed his battery claims because he signed a bout agreement in which he expressly assumed all risks of the fight and implicitly assumed the risk of fighting a doping opponent. A few months later, I granted summary judgment in favor of UFC on the remaining implied-breach claim and closed the case.

Hunt appealed, and the Ninth Circuit reversed in part and affirmed in part, reviving his fraud, battery, aiding-and-abetting-battery, and civil-conspiracy claims. The panel held that Hunt had sufficiently pled his fraud claims and that at least one of his causation theories (that Hunt would have withdrawn from the fight had he known Lesnar was using prohibited substances) was viable because "expert testimony and other evidence might conceivably demonstrate that a withdrawal, as opposed to a high-profile loss, would not have caused" Hunt's economic harm. The panel also held that Hunt's battery claim could go forward because it predicted that the Nevada Supreme Court would not apply assumption-of-risk principles to the intentional tort of battery. By reviving Hunt's fraud and battery claims, the Ninth Circuit also breathed new life into Hunt's derivative aiding-and-abetting and civil-conspiracy claims. The case was remanded, and discovery was completed.

Lesnar, White, and UFC now move for summary judgment in their favor on all of Hunt's revived claims,

arguing that Hunt has failed to identify any statements or omissions attributable to any defendant that were false—an essential element of the fraud claim. Lesnar also contends that the battery claim against him isn't sustainable because Hunt consented to the fight with him regardless of his drug-testing results. UFC agrees and adds that Hunt can point to no evidence that the organization encouraged Lesnar to use prohibited substances before fighting Hunt and thus cannot support his aiding-and-abetting-battery claim against UFC or White. Finally, all defendants aver that Hunt's inability to prove these underlying torts causes his derivative civil conspiracy claim to topple, too. These arguments have been fully briefed and were further tested at a June 8, 2023, hearing on these motions.

Analysis

Summary judgment is appropriate when the pleadings and admissible evidence "show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." When considering a summary-judgment motion, the court must view all facts and draw all inferences in the light most favorable to the non-moving party. When the moving party does not bear the burden of proof on the dispositive issue at trial, it is not required to produce evidence to negate the opponent's claim—its burden is merely to point out the evidence showing the absence of a genuine material factual issue. The movant need only defeat one element of a claim to garner summary

judgment on it because "a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial."

I. Hunt cannot support all elements of his fraud claims.

To establish fraud, a plaintiff must prove that (1) the defendant made a false, material representation; (2) that the defendant knew to be false; (3) the defendants intended the plaintiff to rely on this misrepresentation; (4) the plaintiff relied on this misrepresentation to his detriment; and (5) the misrepresentation proximately caused damages. The plaintiff bears of the burden of proving every element of fraud by clear and convincing evidence. The UFC and White contend that Hunt's fraud claim against them fails at the first element: he cannot show that any of their statements or omissions concerning Lesnar's drug testing were false. They also argue that Hunt cannot present any evidence suggesting that White or UFC knew that Lesnar was using prohibited substances, that Hunt relied on any of White's misrepresentations or omissions, or that Hunt suffered damages from the alleged fraud. And Lesnar contends that Hunt cannot point to any representation he made that Hunt reasonably relied on to believe that Lesnar was going to be a "clean" fighter.

A. Hunt's fraud claim against UFC and White

Appendix A

1. Hunt cannot show that White's alleged misrepresentations were false.

Hunt argues that White, in his capacity as president of UFC, made materially false statements when he gave Hunt "assurance[s] [that] Lesnar would be clean when he entered the Octagon" to fight Hunt. He also theorizes that White made a material omission when he "knew Lesnar would be Hunt's opponent" before Hunt agreed to participate in UFC 200 and "continued to conceal and misrepresent who Hunt's opponent would be by delaying the announcement of Lesnar's return to the UFC.

Hunt's arguments are untethered from the record in this case. Throughout his briefing, Hunt claims that he solicited White for assurances that Lesnar was clean and that White falsely gave him those assurances. But Hunt and White's contemporaneous communications about the topic do not include any statements that could be construed as "assurances" that Lesnar wasclean.65 White told Hunt that USADA was "testing the shit outta" Lesnar, that he was not exempted from any testing, and that he would be "the most tested athlete on the card." None of these statements guarantees any particular outcome for Lesnar's drug tests. Hunt admitted as much at his deposition:

Q: Mr. White [and] others at the UFC told you that Mr. Lesnar would be tested, right?

A: Yes.
Q: They never told you that he was going to be clean, did they?
A. No.

Even if one could infer that White was attempting to "assure" Hunt that Lesnar would be caught before the bout if he were indeed using prohibited substances, Hunt has not shown that any of White's statements were actually false. UFC presents evidence showing that Lesnar was indeed tested more in the months leading to UFC 200 than any other fighter who competed in the event. To the extent that White's statements about USADA being "all over" Lesnar could be considered representations grounded in fact, Hunt presents no evidence to show that USADA was not diligent in testing Lesnar or that White knew his representations to be false. Instead, Hunt admitted in his deposition that UFC made sure Lesnar was entered into USADA's testing pool, and that was the extent of UFC's obligation:

Q: Are you aware of anything [UFC] could do insofar as their job was concerned other than have USADA follow that anti-doping policy and test fighters?
A: I don't —no. I just—no.
Q: Do you contend that any of the tests the UFC or USADA administered to Brock Lesnar were improper in any way?
A: No.

At oral argument, Hunt doubled down on his assertion that White's direct messages to Hunt before the bout constituted misrepresentations. Though he admitted that White's statement that Lesnar would be the most tested fighter on the card was true, he argued that White "had no basis for saying that other than . . . to assure [Hunt] that he was going to be fighting a clean fighter." But White stated in his deposition that he was communicating with Jeff Novitzky, UFC's USADA liaison, at the time and would have been relaying information that Novitzky told him about the state of Lesnar's testing. Hunt presents no evidence to contradict that White was merely passing along information and offering assurances that Lesnar would be tested, not that Lesnar would pass those tests. Because Hunt cannot show that those assurances were indeed false or that White promised that Lesnar would be a clean fighter, I grant UFC and White summary judgment on Hunt's fraud claim that is based on White's alleged affirmative misrepresentations.

2. Hunt cannot show that White or UFC had the requisite knowledge to support his fraud-by-omission claims.

Hunt also argues that White omitted material information because he (1) knew that Lesnar was using prohibited substances but didn't tell Hunt, and (2) he concealed the identity of Hunt's opponent to delay Lesnar's entry into the testing pool and justify Lesnar's

exemption from the four-month testing protocol. Hunt presents no evidence to support his theory that White or UFC knew the information Hunt accuses them of omitting. He relies instead on the fact that Lesnar came from the WWE—which does not have a comprehensive testing policy like the UFC's—to speculate that White must have known Lesnar was indeed using prohibited substances.

But Hunt's inferential leap is belied by the evidence demonstrating that White, UFC, and Lesnar himself did not know that Lesnar would test positive for banned substances. Everyone deposed on this topic—including Hunt—testified unequivocally that they did not believe Lesnar was violating the anti-doping policy before the bout. And indeed, Lesnar's first six tests were negative. Without more, a jury could not reasonably infer that White or UFC *knew* that Lesnar was using prohibited substances.

Nor has Hunt pointed to any evidence that White knew that Lesnar would be fighting Hunt with enough lead time to defraud Hunt. At most, the record shows that White and Lesnar discussed Lesnar fighting in the UFC 200, but they did not discuss Lesnar fighting Hunt at thatevent.77 And while Lesnar told White that he was training for his UFC fight and asked for training gear, there is no evidence that Lesnar was training specifically to fight Hunt. Indeed, there is no evidence

that Lesnar and White were negotiating the bout agreement with any certainty at all until June 3, 2016. Hunt was made aware of the pairing two days later, as evidenced by his messages with White. And three days after that, UFC executed Lesnar's bout agreement, bringing him within USADA's purview. Thus, the notion that UFC and Lesnar knew of the Hunt-Lesnar pairing months before the bout is based on Hunt's pure speculation alone.

The record is also devoid of evidence that White and Lesnar intentionally delayed their deal to justify the four-month testing exemption. And Hunt offers no viable alternative interpretation of the evidence that the deal was not reached until one month before the bout because Lesnar needed permission from the president of the WWE before committing to the fight, and that permission wasn't given until early June. So I grant summary judgment to White and UFC on Hunt's fraud-by-omission claims.

3. Hunt's arguments concerning Lesnar's testing exemption and UFC's failure to expedite test results fall short of establishing detrimental reliance on a false statement.

As a third fraud theory, Hunt suggests that White and UFC committed fraud by (1) granting Lesnar an exemption from the four-month testing requirement and (2) declining to expedite the return of Lesnar's pre-fight testing results. As to Hunt's mistrust of UFC's decision

to extend a testing exemption to Lesnar, Hunt fails to support any fraud element. He has not presented evidence to suggest a nefarious purpose behind the decision to grant the exemption. He cannot dispute contemporaneous proof that the exemption was given because Lesnar's contract was held up by the need to get permission from WWE's president, which only happened in early June. And he does not challenge Novitzky's testimony that Lesnar was not the type of athlete the four-month testing rule—which applied only to retired UFC athletes—was meant to target in the first place. Novitzky explained that the rule was intended to apply to athletes who retired after the anti-doping policy was put in place, to prevent them from leaving the sport to avoid testing and returning later and "competing right away" without being tested. Because Lesnar retired from the UFC years before the testing program was put in place, he and USADA believed that his situation was not within the spirit of the four-month-testing rule, and the decision to apply the rule to him—and then exempt him from it—was made "out of an abundance of caution" because Lesnar technically fell within the letter of the rule. Hunt can point to no evidence, let alone clear and convincing evidence, that these justifications for Lesnar's exemption hid the more nefarious purpose of helping him avoid testing.

Plus it's clear from the record that Hunt cannot show that the exemption was made for some purpose other than those presented on the record, and he cannot

show that he relied on any such information or omission.

Hunt's theory that UFC should have rushed Lesnar's immediate pre-bout test results but chose not to also fails for want of proof. He offers no evidence that UFC had the authority to expedite USADA's testing process or that Hunt demanded that relief but was denied it. And given that Lesnar had six negative tests leading up to the fight, a jury could not reasonably infer that White and UFC had ignored a valid reason to expedite the process and get those last results before the fight.

In sum, each of Hunt's fraud theories requires far too many inferential leaps and ignores too much contrary evidence for a jury to reasonably find in his favor, particularly by clear and convincing evidence. So I grant UFC and White summary judgment on Hunt's fraud claim against them.

B. Hunt's fraud claim against Lesnar fails because he cannot show that Lesnar intended for Hunt to rely on any statement about his use of prohibited substances.

Lesnar moves for summary judgment on Hunt's fraud claim against him, arguing that Hunt admits that "(i) he and Lesnar never met, spoke to one another, or communicated with one another in any manner prior to UFC 200; (ii) Lesnar never made any written or oral

representations to him of any kind; and (iii) Lesnar never represented to anyone that he was a 'clean fighter' or that he would not test positive for substances prohibited by the UFC [antidoping policy]." Hunt acknowledged in written discovery responses that he didn't rely on any statements by Lesnar, either directly to him or made to any third party, but he did state that he "understood . . . Lesnar's written agreement(s) with the UFC including his commitment to adhere to the UFC's anti-doping policy" and that Hunt "was a third-party beneficiary to any such agreement." Hunt doesn't rely on any third-party-beneficiary argument at this stage, but he does declare that he "relied on Lesnar's signing his bout agreement for UFC 200, which requires that UFC fighters comply with the UFC's anti-doping policy, as evidence that Lesnar would be a clean, fair fighter at UFC 200.

1. Hunt's affidavit creates a genuine issue of fact about his reliance on Lesnar's bout-agreement anti-doping promise.

Lesnar notes that Hunt's summary-judgment affidavit represents the first time Hunt has claimed that he relied on Lesnar's bout agreement as a clean-fight promise. He also points out that Hunt has presented no evidence that he even read Lesnar's deal before the fight or understood it as Lesnar's affirmative representation that he would abide by the anti-doping policy.

To be sure, the timing of Hunt's belated claim that he relied on Lesnar's bout agreement as a promise that Lesnar would comply with the anti-doping policy makes this statement dubious. Not to mention, Hunt presents no evidence that he knew Lesnar signed the agreement or that he even saw Lesnar's agreement before the fight. But this sworn statement nevertheless creates a genuine issue of fact about whether Hunt relied on Lesnar's bout-agreement promise that he would "not . . . use those prohibited substances and prohibited methods identified in the"
policy.

2. The record establishes that Hunt's reliance was not reasonable.

The unreasonableness of Hunt's reliance, however, proves fatal for this claim. The record reflects that Hunt was quite certain before the fight that Lesnar was violating his agreement's anti-doping term. Hunt testified at deposition that several people told him that Lesnar was using performance-enhancing drugs after the UFC 200 bout was announced. Hunt repeatedly asked White questions that indicated he believed Lesnar was "juicing," and he inquired what would happen if Lesnar's tests came back positive.

Hunt's prior experience with dirty fighters who were bound by the same contract language also rendered any reliance on that language patently

unreasonable. He acknowledged in his complaint that he had fought other UFC "cheaters" who tested positive for prohibited substances before UFC 200.93 Although Hunt claims that he "assumed that [Lesnar] was following the regulations like everyone else" and "put [his] trust in [UFC] to look after these things," when his experience was that fighters in the UFC were, in fact, using prohibited substances, he cannot show that he reasonably relied on Lesnar's bout agreement as his promise to fight clean.

3. The record is devoid of evidence that Lesnar intended Hunt to rely on his contract's language.

Even if Hunt could persuade a jury that he reasonably relied on Lesnar's agreement to comply with the UFC's anti-doping policy, he cannot show by clear and convincing evidence that Lesnar intended for Hunt to do so. Hunt points to no evidence that Lesnar knew that Hunt would even read his agreement, let alone that he signed it with the intention that Hunt would rely on the anti-doping provision to believe that Lesnar would not test positive for any prohibited substances. Nor does Hunt show that Lesnar himself knew such a representation to be false—he has steadfastly denied intentionally ingesting a prohibited substance, and Hunt has identified no evidence suggesting that Lesnar knew he would violate the policy but signed it anyway. With no genuine issue of

fact about Lesnar's intent for Hunt to rely on his bout agreement as a drug-free promise, Lesnar is entitled to summary judgment on Hunt's fraud claim against him, too.

II. Hunt cannot succeed on his battery claims.

A. Hunt's consent to the bout bars recovery on his battery claim against Lesnar.

In Nevada, "[a] battery is an intentional and offensive touching of a person who has not consented to the touching." "One who effectively consents to conduct of another intended to invade his interests cannot recover in an action of tort for the conduct or from harm resulting from it."96 As the Nevada Supreme Court, relying on the Second Restatement of Torts, explained in *Davies v. Butler*, "[t]o be effective, consent must be . . . to the particular conduct, or to substantially the same conduct." The Court elaborated that "capacity to consent requires the mental ability to appreciate the 'nature, extent[,] and probable consequences of the conduct consented to.' It explained that "consent is not effective as a defense to battery 'where the beating is excessively disproportionate to the consent, given or implied, or where the party injured is exposed to loss of life or great bodily harm.

The line between substantially same and disproportionate conduct is often illustrated by the

hornbook example that one who consents to a fist fight doesn't consent to his opponent's use of brass knuckles or a knife. The Restatement further clarifies this distinction: "Minor differences in degree or extent, such as the fact that the force exerted by the actor in delivering the blow is slightly greater than would ordinarily have been contemplated, usually will not be held to exceed the consent, although a much greater force would clearly exceed it."

Hunt claims that the touching he experienced during the Lesnar bout was a battery because, while he consented to fighting Lesnar so long as he abided by the UFC's anti-doping policy, he did not consent to fighting an opponent who was using performance-enhancing drugs. He contends that "fighting a clean, non-doping fighter . . . is far different from fighting a well-trained fighter who is supercharged with enhanced strength, speed, agility, and stamina due to the effects of doping." Neither side disputes that the expected activity from a clean fighter and a doping fighter is the same: either will punch, kick, and even aim to knock out their opponent to win the bout. The difference—as Hunt frames it—is one of degree, and while he consented to getting beaten up by a person of natural strength, he would not consent to fighting someone who has been "supercharged" by performance-enhancing drugs. In essence, Hunt argues that the clomiphene was the brass knuckles that Lesnar brought to this fist fight.

Appendix A

1. There is no evidence that Lesnar's performance was enhanced by a banned substance.

Hunt's distinction between the natural-strength and supercharged fighter cannot carry the day on this record, however, because there is no

evidence that Lesnar was supercharged in this fight. The closest Hunt gets to proof is the expert opinion of Mike Israetel, an athletic coach who opined generally on the effects of anabolic-androgenic steroids. Lesnar didn't test positive for steroids—just clomiphene. Israetel attempts to bridge that chasm by opining that the presence of clomiphene in Lesnar's system implies that he was using steroids prior to the fight and took clomiphene to manage "high estrogen levels at the conclusion of a steroid cycle." And such steroids, Israetel explains, can increase muscle strength, recovery ability, work capacity, endurance, mental acuity, power, speed, and endurance while decreasing injury down-time and body fat.

At best, Israetel's opinion shows that Lesnar tested positive for a prohibited substance that suggests the use of another substance that can have an effect of enhancing a person's physical strength. But Hunt points to no evidence that Lesnar showed any signs of enhanced strength typically associated with the use of performance-enhancing drugs during this match. Indeed, the record, viewed in the light most favorable to Hunt, supports only the opposite inference. While

Hunt lost the fight, he was not knocked out and did not suffer any injuries beyond those typically expected from this inherently dangerous sport. A few days after the fight, Hunt thanked White for the opportunity to fight Lesnar, saying that, regardless of the result, he was "happy" with the exposure from fighting such a "famous person." And at his deposition five years later, Hunt still acknowledged that he thought it was a "great" and "even" fight. So on this record, there was nothing truly different about this fight than any other in Hunt's career or what would be expected in a natural-strength MMA match.

2. Hunt cannot show that Lesnar's cheating vitiated his consent.

Apparently recognizing the evidentiary infirmity of this supercharged-fighter theory, Hunt shifted away from it by the time of oral argument. Hunt's counsel acknowledged that he wasn't focused on whether Lesnar was "supercharged" or "super human" when he fought Hunt. The issue, according to Hunt's counsel, was solely that Lesnar was caught "cheating." So he rested the battery claim instead on the theory that Hunt couldn't have consented "to go into a combat sport or any other sport with a cheater.

But a violation of the rules of the game won't vitiate consent to battery unless that violation caused a meaningful change in the physical contact that's

expected. The Supreme Court of Virginia's opinion in *Koffman v. Garrett* is illustrative of this principle. A middle school football player sued his coach for battery after the coach slammed him to the ground to demonstrate "the proper tackling technique to the defensive players." The force of the tackle broke the student's arm. The coach argued that the player consented to be tackled when he joined the football team. The player responded that, while he consented to physical contact with other students, he did not consent to being tackled by an adult coach with obvious differences in strength than the average middle-school football player. The court agreed at the motion-to-dismiss stage, finding that "reasonable persons could disagree on whether [the student] gave such consent." The Nevada Court of Appeals' unpublished opinion in *Kuchta v. Sheltie Opco, LLC* similarly reflects that, under Nevada battery law, consent can be deemed withdrawn if an offensive contact is not substantially the same as what was expected. The Court held that a plaintiff could maintain a battery claim against a nightclub that promised a mild ride on abmechanical bull but instead intentionally and "significantly increased the speed and violence of the bull's movements," causing the plaintiff to be thrown from the bull and suffer injuries. The defendant maintained that the plaintiff consented to the ride by signing a release-of-liability form. The Court rejected that argument at the motion-to-dismiss stage and held that the plaintiff only consented to a mild ride, so "if the ride went beyond a mild ride, then there is a material

question of fact as to the nature of the ride and to whether [the plaintiff] consented to the resulting physical contact as the result of the unexpectedly rough ride."

In this case, however, there was no unexpectedly rough ride or tackling by an opponent of disproportionate size and strength. Hunt fought a man in his weight class and proclaimed that he believed it was an even fight. He expected a fight typical of the mixed-martial arts, one with kicking, punching, and other tactics endorsed by the sport. As he readily acknowledged after the fight, that's precisely what he received. Because the record establishes without genuine dispute of material fact that Hunt consented to the same or substantially the same contact, degree of force, and consequences that he experienced, I find that his consent to the fight precludes him from establishing his battery claim against Lesnar. Thus, Lesnar is entitled to summary judgment in his favor on Hunt's battery claim against him.

B. Hunt's derivative claim for aiding and abetting battery also fails.

A civil claim for aiding and abetting is a derivative one that requires the underlying substantive tort be accomplished. Because Hunt consented to Lesnar's conduct and thus cannot prove his underlying battery claim, Hunt cannot maintain this derivative claim against UFC or White either. But even if Hunt

could establish his battery claim against Lesnar, UFC and White would still be entitled to summary judgment on his aiding-and-abetting-battery claim. To establish such a claim, a plaintiff must prove that the alleged aider and abetter "knowingly and substantially assisted the primary violator in committing" battery. Hunt relies on UFC's decision to grant Lesnar a four-month-testing exemption and its failure to expedite his testing results to argue that UFC was intentionally encouraging Lesnar to use prohibited substances. But he points to no evidence that UFC or White knew Lesnar would test positive for prohibited substances, nor any evidence that they helped or encouraged Lesnar to take performance enhancing drugs or that they slow-walked the final test results or even had the ability to do so. So UFC and White are entitled to summary judgment on Hunt's aiding-and-abetting-battery claim.

III. Hunt's civil-conspiracy claim fails because Hunt has no evidence of collusion to accomplish an unlawful objective.

Hunt also asserts a civil-conspiracy claim against UFC, White, and Lesnar for colluding "to defraud Hunt and commit a battery" against him. "Actionable civil conspiracy arises where two or more persons undertake some concerted action with the intent to accomplish an unlawful objective for the purpose of harming another, and damage results." But

Hunt's inability to prove fraud or battery also means that he cannot show that the unlawful predicates to his civil-conspiracy claim have occurred. So I grant the defendants summary judgment on Hunt's civil-conspiracy claim, too.

IV. UFC's motions to exclude Hunt's experts are denied as moot.

Along with their summary-judgment motion, UFC and White move to exclude the opinions of Hunt's proffered experts on economic damages and psychological harm. Because I find that all of Hunt's claims fail on their primary elements and never reach the issue of damages, I need not and do not consider whether the testimony of these challenged experts must be excluded. So I deny as moot the motions to exclude the expert testimony of Brian Buss and Dr. Carrie Hastings.

Conclusion

IT IS THEREFORE ORDERED that Zuffa, LLC, Dana White, and Brock Lesnar's motions for summary judgment **[ECF Nos. 219 and 220] are GRANTED**. The Clerk of Court is directed to **ENTER JUDGMENT for Zuffa LLC, Dana White, and Brock Lesnar and against Mark Hunt on all claims.**

IT IS FURTHER ORDERED that Zuffa, LLC's motions to exclude experts **[ECF Nos. 223 and 231] are DENIED as moot.**

IT IS FURTHER ORDERED that **the Clerk of Court is directed to CLOSE THIS CASE.**

U.S. District Judge Jennifer A. Dorsey
September 25, 2023

APPENDIX B: DISTRICT COURT FEE AWARD ORDER, FILED MARCH 26, 2024

Case No.: 2:17-cv-00085-JAD-VCF

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Mark Hunt,

Plaintiff

v.

Zuffa, LLC, Ultimate Fighting Championship, Dana White, and Brock Lesnar,

Defendants

Order Granting in Part Defendant's Second Motion for Attorneys' Fees and Costs

[ECF No. 265]

Mark Hunt lost a 2016 mixed-martial-arts bout to Brock Lesnar and blames the loss on Lesnar's use of performance-enhancing drugs and the Ultimate

Fighting Championship (UFC) organization's complicity in that anti-doping policy breach. So he sued Lesnar, the UFC, and UFC President Dana White. Hunt's lawsuit was dismissed in the early stages of this case and I granted UFC's motion for attorneys' fees incurred up to that point, finding that the 2016 Promotional Ancillary Rights Agreement that governed the parties' professional relationship permitted the award of fees to the prevailing party. Hunt appealed my dismissal decision but didn't appeal the attorney-fees order, and the Ninth Circuit Court of Appeals revived his fraud, battery, aiding-and-abetting battery, and civil-conspiracy claims, permitting Hunt to conduct discovery that might support his claims. But after the close of discovery, I granted UFC and Lesnar summary judgment on all of Hunt's remaining claims, finding that Hunt was "unable to provide the necessary evidentiary support for his theories."1 UFC now moves for attorneys' fees for the post-appeal portion of this case, relying on the same 2016 agreement. Hunt didn't respond, and the deadline to do so has long since passed. UFC has shown that it is contractually entitled to collect attorneys' fees and costs and that its fees request is reasonable, so I award UFC the attorneys' fees it seeks. But some of the costs UFC requests aren't reasonable or authorized by Nevada law, so I reduce that award.

Discussion

A. The 2016 agreement entitles UFC to an

award of its entire fees-and-costs request.

UFC seeks attorneys' fees and costs that it incurred in this lawsuit under the parties' agreement, which provides that a "prevailing party" may recover "its attorneys' fees and costs" if required to litigate disputes "arising from or related to this Agreement." While Federal Rule of Civil Procedure 54(d)(2) authorizes fee requests to be made by motion, the rule itself does not provide authority for awarding fees; rather, "there must be another source of authority for such an award." Under both federal and Nevada law, valid contractual provisions for the payment of attorneys' fees constitute a sufficient source of authority supporting a fee award. I find that Hunt's state-law claims for fraud, battery, aiding and abetting battery, and civil conspiracy sufficiently relate to the parties' underlying contract to permit a fee award, so I proceed to analyze the reasonableness of UFC's requested fees.

UFC's attorneys' fees request is reasonable.

Federal courts sitting in diversity apply state law in calculating attorneys' fees. Under Nevada law, "the method upon which a reasonable fee is determined is subject to the discretion of the court, which is tempered only by reason and fairness." Courts generally apply the lodestar approach to calculating fees, which involves "multiplying the number of hours reasonably spent on the case by a reasonable hourly rate." Nevada law also directs courts to review the

requested amount "in light of the factors set forth" in the Nevada Supreme Court's decision *Brunzell v. Golden Gate National Bank*.10 Those factors include:

> the qualities of the advocate: his ability, his training, education, experience, professional standing, and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time, and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; [and] (4) the result: whether the attorney was successful and what benefits were derived.

Local Rule 54–14 requires any application for attorneys' fees to include an attorney affidavit, "a reasonable itemization and description of the work performed[,]" and "[a] brief summary" of 13 categories of information designed to elicit more information about the case and the work that the attorney performed.

Employing the lodestar approach, UFC requests $390,605.00 in attorneys' fees that it incurred in defending this case after its remand from the Ninth Circuit through the present, and it provides the necessary supporting documentation to sustain its fee request. UFC does not request fees incurred during the

appeal or those related to UFC's prior fee motion. I have reviewed UFC's motion, declarations, and billing records in light of both the *Brunzell* factors and Local Rule 54-14. I find the rates charged and amount of work performed to be reasonable based on the local legal market and circumstances of this case. I also find that the request for fees is properly supported by evidence. So I grant UFC the $390,605.00 it incurred litigating this matter post-appeal.

C. UFC is entitled to some of its costs under NRS 18.005.

UFC also requests $127,036.94 in costs and attaches an itemized list of the costs it incurred in this matter.15 An award of standard costs in federal district court is typically governed by Rule 54(d) and 28 U.S.C. § 1920, and not applicable state law, even in diversity cases. But the Supreme Court has indicated that the federal cost statutes merely "establish a clear baseline" against which "express authority" may permit the recovery of "litigation expenses that are not specified" in statutes like § 1920.17 The Ninth Circuit has also repeatedly indicated that a "contractual right" could permit the recovery of costs ordinarily disallowed under federal law. So I find that UFC is not limited to the costs outlined in § 1920 because of the parties' contract, which entitles the prevailing party to recover costs available under Nevada law. UFC thus may recover costs under Nevada Revised Statute (NRS) 18.005.

Costs awarded under NRS 18.005 must be

"reasonable, necessary, and actually incurred," and the district court has "wide discretion to determine which costs meet these criteria." Upon reviewing UFC's itemized list of costs, I find that UFC's requests for reimbursement of its expert and data-hosting fees are excessive. NRS 18.005(17) permits an award of "any other reasonable and necessary expense incurred in connection with the action, including reasonable and necessary expenses for computerized services for legal research." UFC seeks $27,739.39 in costs for a discovery-data hosting service in addition to legal-research costs. UFC has not justified that substantial expenditure under the statute, so I disallow the costs UFC incurred for discovery data hosting.

NRS 18.005(5) also permits "reasonable fees of not more than five expert witnesses in an amount of not more than $15,000 for each expert witness, unless the court allows a larger fee after determining that the circumstances surrounding the testimony of the expert witness were of such necessity as to require the larger fee."20 UFC requests $72,546.50 in expert fees for two sources: "EconLit LLC" and Mark J. Mills. UFC doesn't explain why I should award approximately $20,000 more per expert than the statute permits, and I do not find that the experts' contributions to this case warrant a larger fee.21 So I reduce UFC's requested expert costs to $30,000—$15,000 for each listed expert. I thus award UFC $56,751.05 in costs.

Conclusion

IT IS THEREFORE ORDERED that Zuffa, LLC d/b/a Ultimate Fighting Championship's motion for

attorneys' fees and costs **[ECF No. 265] is GRANTED in part**. Zuffa, LLC is awarded $390,605.00 in attorneys' fees and $56,751.05 in costs, for a total of $447,356.05. **The Clerk of Court is directed to AMEND the final judgment [ECF No. 264] accordingly.**

U.S. District Judge Jennifer A. Dorsey
March 26, 2024

APPENDIX C: NINTH CIRCUIT UNPUBLISHED OPINION, FILED SEPTEMBER 24, 2021

No. 19-17529

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Mark Hunt,

Plaintiff-Appellant

v.

Zuffa, LLC, Ultimate Fighting Championship, Dana White, and Brock Lesnar,

Defendants-Appellees

Appeal from the United States District Court for the District of Nevada. Jennifer A. Dorsey, District Judge, Presiding Argued and Submitted October 5, 2020, Portland, Oregon

[MEMORANDUM]

Before: PAEZ and RAWLINSON, Circuit Judges, and

Appendix C

PREGERSON,** District Judge.

Concurrence by Judge RAWLINSON.

Plaintiff-Appellant Mark Hunt appeals the district court's dismissal of claims stemming from his participation in a mixed martial arts ("MMA") bout. We have jurisdiction under 28 U.S.C. § 1291, and review de novo both the district court's Rule 12(b)(6) dismissal and grant of summary judgment de novo. *Bain v. Cal. Tchrs. Ass'n*, 891 F.3d 1206, 1211 (9th Cir. 2018); *Hawn v. Exec. Jet Mgmt., Inc.*, 615 F.3d 1151, 1155 (9th Cir. 2010). We review for abuse of discretion the district court's dismissal of Hunt's claims with prejudice. *Okwu v. McKim*, 682 F.3d 841, 844 (9th Cir. 2012). Applying these standards, we affirm in part, reverse in part, and remand for further proceedings.

We affirm the district court's dismissal of Hunt's breach of contract claim, as well as the grant of summary judgment on Hunt's related claim for breach of the implied covenant of good faith and fair dealing.2 The Promotional and Ancillary Rights Agreement ("PARA") provides that Hunt's "sole remedy" for any breach is the recovery of any unpaid compensation. "A basic rule of contract interpretation is that every word must be given effect if at all possible." *Musser v. Bank of Am.*, 114 Nev. 945, 949 (1998) (per curiam) (internal quotation marks and brackets omitted). "A court should not interpret a contract so as to make meaningless its provisions." *Phillips v. Mercer*, 94 Nev. 279, 282 (1978) (per curiam).

The PARA's explicit exclusion of certain specific remedies does not permit us to simply read the phrase "sole remedy" out of the PARA, as Hunt would have us do.

Furthermore, the damages Hunt seeks are consequential damages explicitly foreclosed by the PARA, not reliance damages. A reliance claim seeks to put a party "back in the position in which he would have been had the contract not been made." Restatement (Second) of Contracts § 344 cmt. a (1981); *see also ALLTEL Info. Servs., Inc. v. FDIC*, 194 F.3d 1036, 1039 n.3 (9th Cir. 1999). Hunt's arguments are premised on the contention that he was put "in a worse position than he would have otherwise found himself absent UFC's breach." This is the very essence of an expectation interest, not a reliance interest, and is barred by the PARA. *See ALLTELL*, 194 F.3d at 1039 n.3.

We also affirm the district court's dismissal of Hunt's unjust enrichment claim. Although a party generally may plead even inconsistent claims in the alternative, Fed. R. Civ. P. 8(d)(2), (3), "[a]n action based on a theory of unjust enrichment is not available when there is an express, written contract, because no agreement can be implied when there is an express agreement." *Leasepartners Corp. v. Robert L. Brooks Tr. Dated Nov. 12, 1975*, 113 Nev. 747, 755 (1997) (per curiam). Even assuming Hunt alleged his unjust

enrichment claim in the alternative, he does not allege or contend that the PARA or any other pertinent agreement is invalid.

Hunt's racketeering claims also fail. "The elements of a civil RICO claim are as follows: (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity . . . (5) causing injury to plaintiff's business or property." *Living Designs, Inc. v. E.I. Dupont de Nemours & Co.*, 431 F.3d 353, 361 (9th Cir.2005) (internal quotation marks and citation omitted); *see also* 18 U.S.C. §§ 1962(c), 1964(c). Under RICO, an enterprise includes "any individual . . . or group of individuals associated in fact." *Odom v. Microsoft Corp.*, 486 F.3d 541, 548 (9th Cir. 2007) (en banc) (quoting 18 U.S.C. § 1961(4)). An associated-in-fact enterprise is "a group of persons associated together for a common purpose of engaging in a course of conduct." *Id.* at 552 (quoting *United States v. Turkette*, 452 U.S. 576, 583 (1981)). Such an enterprise, however, cannot exist without "relationships among those associated with the enterprise." *Boyle v. United States*, 556 U.S. 938, 946 (2009). Here, although Hunt alleges that Appellees, other UFC fighters, UFC officials, and a wrestling organization are members of the RICO enterprise, he does not sufficiently allege that these alleged associates functioned as a unit, as opposed to a collection of unrelated individuals. *See United States v. Bingham*, 653 F.3d 983, 992 (9th Cir. 2011).

With respect to Hunt's fraud claims, although certain of his damages theories are impermissibly speculative, his withdrawal-based theory is potentially viable. As an initial matter, Hunt adequately alleges actionable misrepresentations.3 UFC is correct that, under Nevada law, "expressions of opinion[,] as distinguished from representations of fact, may not be the predicate for a charge of fraud." *Clark Sanitation, Inc. v. Sun Valley Disposal Co.*, 87 Nev. 338, 341-42 (1971). However, White's representations to Hunt that Lesnar "will be the most tested athlete on this card," that officials were "testing [Lesnar] as we speak," and other similar representations, made in response to Hunt's direct questions about Lesnar's testing status, can hardly be considered statements of White's subjective opinions, particularly in light of White's alleged knowledge of and role in the testing scheme. Lesnar's contention that he made no misrepresentations directly to Hunt is of no moment. *See* Restatement (Second) of Torts § 533 (1977) ("The maker of a fraudulent misrepresentation is subject to liability . . . if the misrepresentation, although not made directly to the other, is made to a third person and the maker intends or has reason to expect that . . . it will influence his conduct in the transaction or type of transaction involved.").

As to damages, proximate cause is an essential element of Hunt's fraud claims. *Chen*, 116 Nev. at 284. The Supplemental Complaint alleges, among other things, that Hunt's damages, including the loss of paid

appearances and reduced advertising and licensing revenues, stemmed from Hunt's loss to Lesnar, which itself was a product of the fraudulent doping scheme. Absent such a scheme, Hunt alleges, he would have (1) defeated Lesnar or (2) suffered a "less lopsided and less damaging loss." We agree with the district court that the links in this alleged chain of causation are speculative, and that Hunt cannot possibly prove either of these two alternative core premises.

The district court did not, however, address Hunt's third theory of causation: had he known the truth about the doping scheme, he would have withdrawn from the fight altogether rather than face a doped Lesnar, thus avoiding even the possibility of suffering the reputational and other harms associated with a loss in a marquee bout. Hunt's allegations regarding what his own actions would have been are not as speculative as, and are far more susceptible to proof than, his counterfactual allegations about how a clean fight would have been qualitatively different. So too is the next link in the chain of causation; expert testimony and other evidence might conceivably demonstrate that a withdrawal, as opposed to a high-profile loss, would not have caused Hunt's patrons, followers, and licensees to abandon him to the extent they did in the wake of Lesnar's victory.

Our decision in *Canyon County v. Syngenta Seeds, Inc.*, 519 F.3d 969 (9th Cir. 2008), is not to the contrary. There, we noted that the plaintiff had not alleged any link between an increase in demand for public services

and the defendant's alleged hiring of undocumented, as opposed to documented, workers. *Canyon Cnty.*, 519 F.3d at 982-83. Furthermore, the proceedings required to "evaluate the extent to which the companies' illegal hiring practices had created increased demand for County services" would be "speculative in the extreme." *Id.* at 983; *see also Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 459-60 (2006). Here, in contrast, there are far fewer potential confounding variables. Hunt's loss to Lesnar was a salient event separating Hunt's periods of increased and decreased renown, and Hunt's and others' histories of waxing and waning success and the correlation of those histories to fighters' records might well provide a sufficient basis of comparison to allow Hunt to demonstrate the varying pernicious effects of a loss versus a withdrawal. Thus, the issues of feasibility of proof that were present in *Canyon County* do not appear to be fatal concerns here.

Accordingly, we reverse the district court's dismissal of Hunt's fraud claims on proximate cause grounds, and remand for further proceedings under Hunt's withdrawal theory of causation.

We also reverse the district court's dismissal of Hunt's battery and aiding and abetting battery claims. "A battery is an intentional and offensive touching of a person who has not consented to the touching . . . ." *Humboldt Gen. Hosp. v. Sixth Jud. Dist. Ct.*, 132 Nev. 544, 549 (2016) (citation omitted). Although "[c]onsent negates the existence of the tort," *Prell Hotel Corp. v.*

Antonacci, 86 Nev. 390, 392 (1970), "[t]o be effective, consent must be . . . to the particular conduct, or to substantially the same conduct." *Davies v. Butler*, 95 Nev. 763, 774 (1979) (quoting Restatement (Second) of Torts § 892A (1979). Because the Nevada Supreme Court has not spoken to the question whether, or to what extent, a battery claim may be brought on the basis of conduct in sporting activities, we must predict how that court would decide the issue. *Lewis v. Tel. Emps. Credit Union*, 87 F.3d 1537, 1545 (9th Cir. 1996).

The principles of assumption of risk and of consent are similar. *See* Restatement § 892A cmt. a. Nevertheless, the Restatement draws an important distinction between the two, identifying assumption of risk as "[c]onsent to conduct that is merely negligent, creating an unreasonable risk of harm," and specifying that the concept is explained in a chapter separate and apart from the discussion of consent. Restatement § 892 cmt. a; *see In re Frei Irrevocable Tr. Dated Oct. 29, 1996*, 133 Nev. 50, 53 n.3 (2017) ("In the absence of controlling law, we often look to the Restatements for guidance."); *Davies*, 95 Nev. at 774 (relying on the Second Restatement of Torts to define consent). Thus, although the Restatement does counsel that "[o]ne who effectively consents to conduct of another intended to invade his interests cannot recover in an action of tort . . .," that principle does *not* apply to assumption of risk. Restatement § 892A(1). The Court of Appeals of Nevada's recent decision in *Kuchta v. Sheltie Opco, LLC*

also suggests that the Nevada Supreme Court would follow a similar course. 466 P.3d 543, 2020 WL 3868434, at *6 n.8 (Nev. App. 2020) (unpublished disposition) ("Both express and implied assumption of the risk would not bar Kuchta's battery claim.").

We therefore reverse and remand Hunt's battery claims.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS.

***Hunt v. Zuffa, LLC*, Case No. 19-17529**

Rawlinson, Circuit Judge, concurring:

I concur in the result.

APPENDIX D: NINTH CIRCUIT UNPUBLISHED MEMORANDUM, FILED APRIL 22, 2025

NOT FOR PUBLICATION

No. 23-3113

D.C. No. 2:17-cv-00085-JAD-VCF

MEMORANDUM

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Mark Hunt,

Plaintiff-Appellant

v.

Zuffa, LLC, Ultimate Fighting Championship, Dana White, and Brock Lesnar,

Defendants-Appellees

Argued and Submitted November 20, 2024 Pasadena, California

Before: PAEZ and RAWLINSON, Circuit Judges, and PREGERSON, District Judge.**

Appendix D

* This disposition is not appropriate for publication

* and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Dean D. Pregerson, United States District Judge for the Central District of California, sitting by designation.

Plaintiff-Appellant Mark Hunt ("Hunt") appeals the district court's grant of summary judgment to Defendants-Appellees on Hunt's fraud, battery, aiding and abetting battery, and civil conspiracy claims, all of which stem from his participation in a mixed martial arts bout. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's grant of summary judgment, and affirm. *Universal Health Servs., Inc. v. Thompson*, 363 F.3d 1013, 1019 (9th Cir. 2004).

"We . . . may affirm on any ground supported by the record even if it differs from the rationale of the district

court." *Opara v. Yellen*, 57 F.4th 709, 721 (9th Cir. 2023) (citation omitted). Although the district court did not reach the issue, damages are an essential element of Hunt's fraud and battery claims, which underpin the remaining claims. *See Chen v. Nevada State Gaming Control Bd.*, 116 Nev. 282, 284 (2000); *Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 110-11 (1992). Unfortunately, Hunt does not point to any evidence in the record of any physical, emotional, economic, or reputational damage or harm attributable to Defendants-Appellees' conduct. Indeed, while maintaining that such evidence does in fact exist, Hunt acknowledged both in his reply brief and at argument that evidence of damages has not yet been "adequately presented." At the summary

judgment stage the nonmoving party must present evidence showing there is a genuine issue of material fact for trial. *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987). "[T]he nonmoving party may not merely . . . proceed in the hope that something can be developed at trial in the way of evidence to support its claim."[1] *Id.* (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986)). Absent evidence of damages resulting from Defendants-Appellants' allegedly wrongful conduct, we must affirm.

AFFIRMED.

Appendix E

APPENDIX E: NINTH CIRCUIT ORDER DENYING PETITION FOR REHEARING FILED MAY 13, 2025

No. 23-3113

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Mark Hunt,

Plaintiff-Appellant

v.

Zuffa, LLC, Ultimate Fighting Championship, Dana White, and Brock Lesnar,

Defendants-Appellees

Before: PAEZ and RAWLINSON, Circuit Judges, and PREGERSON, District Judge.*

* The Honorable Dean D. Pregerson, United States District Judge for the Central District of California, sitting by designation.

The Petition for Panel Rehearing, filed April 29, 2025, is DENIED.

Appendix F

APPENDIX F: NINTH CIRCUIT MANDATE, AFFIRMING SUMMARY JUDGMENT FILED JUNE 24, 2025

No. 23-3113

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Mark Hunt,

Plaintiff-Appellant

v.

Zuffa, LLC, Ultimate Fighting Championship, Dana White, and Brock Lesnar,

Defendants-Appellees

The judgment of this Court, entered April 22, 2025, takes effect this date. This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT: MOLLY C. DWYER