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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO--UNLIMITED JURISDICTION

THE NATIONAL GRANGE OF THE ORDER  
OF PATRONS OF HUSBANDRY, a  
Washington, D.C. nonprofit corporation,

Plaintiff,

and

THE CALIFORNIA STATE GRANGE, a  
California nonprofit corporation, and ED  
KOMSKI,

Plaintiffs-in-Intervention

v.

THE CALIFORNIA STATE GRANGE, a  
California nonprofit corporation, and ROBERT  
MCFARLAND, JON LUVAAS, GERALD  
CHERNOFF, DAMIAN PARR, TAKASHI  
YOGI, KATHY BERGERON, and BILL  
THOMAS,

Defendants.

Case No. 34-2012-00130439

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFFS-IN-INTERVENTION'S  
MOTION FOR SUMMARY JUDGMENT  
OR, IN THE ALTERNATIVE, FOR  
SUMMARY ADJUDICATION

Hearing Date: April 30, 2015  
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1 **INTRODUCTION**

2 The California State Grange was created as a subordinate, constituent part of the National  
3 Grange of the Order of Patrons of Husbandry<sup>1</sup> in 1873. For over 138 years, it operated subject to  
4 the rules of the National Grange to which it had agreed to be bound from the very beginning of  
5 its existence. Its members similarly pledged to “faithfully comply” with the National Grange’s  
6 rules as a condition of admission to membership or installation in office. In reliance on these  
7 promises, they were entrusted to control Grange property in California. In 2012, however, some  
8 of those individuals decided that they no longer wished to follow the National Grange’s rules,  
9 left The Grange, and attempted to take the California State Grange with them. The issue to be  
10 resolved in this case, then, is whether these individuals may disregard the Order’s rules and  
11 divert Grange property acquired over generations for their own uses. As demonstrated below,  
12 the answer to that question is unequivocally “no,” for at least two independent reasons.

13 First, under well-settled California law, the members of a voluntary association may not  
14 take the association’s property with them when they leave. Thus, California courts routinely  
15 enforce the rules of hierarchical organizations like The Grange. This is especially so where, as  
16 here, the governing documents of the corporation holding the property explicitly agree to abide  
17 by the association’s rules. Moreover, much of the Grange property held by the California State  
18 Grange was acquired via charitable donation and therefore may not be diverted to other causes.

19 Second, Defendants’ actions to amend the California State Grange’s governing  
20 documents to remove that entity from The Grange were of no effect. Defendants joined The  
21 Grange and took their offices only after swearing to uphold the rules of the National Grange at  
22 all times. When they attempted to separate the California State Grange from the Order, they  
23 violated those promises and ceased to be entitled to act on behalf of the corporation.  
24 Accordingly, their actions were *ultra vires*, null, and void.

25  
26 <sup>1</sup> The term “National Grange” shall refer to the highest level of the organization’s  
27 hierarchy. The terms “The Grange” and “the Order” shall refer to the entire hierarchy of the  
organization, from the lowest levels up through and including the National Grange.

1 **STATEMENT OF FACTS**

2 **I. The Structure Of The Grange**

3 The Grange is a hierarchical fraternal organization formed in 1867. (UMF 1.)<sup>2</sup> It has a  
4 multi-tiered structure and representative form of government prescribed by the National  
5 Grange's Digest of Laws. (UMF 2.) At the highest level, the National Grange is a delegate body  
6 that meets annually and is principally comprised of the "Masters" (*i.e.*, presidents) of the  
7 subordinate units in the next level of the hierarchy, the State Granges. (UMF 3.) A State Grange  
8 is a delegate body principally composed of the Masters of constituent units in the lower levels of  
9 the hierarchy, the Pomona and Subordinate Granges. (UMF 4.)

10 The National Grange is "the controlling and supreme law making division of the Order  
11 from which body all other Granges of the divisions of the Order shall derive their rights and  
12 powers." (UMF 5.) It has adopted and from time to time amends a "Digest of Laws," which  
13 includes its Constitution and By-Laws, among other rules. (UMF 6.) All provisions in the  
14 Digest of Laws are binding upon all constituent units and individual members of The Grange,  
15 including the California State Grange. (*Ibid.*)

16 The Digest of Laws in its current form was adopted at the 1985 annual meeting of the  
17 National Grange, which was attended by delegates from the California State Grange. (UMF 7-  
18 8.) The revised Digest was ratified by the State Granges in 1986 and went into effect in 1987.  
19 (UMF 7.) Following ratification, the 1987 annual meeting of the delegate body of the California  
20 State Grange "adopted a new Constitution and By-Laws so as to conform to the National Grange  
21 Constitution and By-Laws." (UMF 9.)<sup>3</sup>

22 Each State Grange, including the California State Grange, adopts and from time to time  
23 amends its own Constitution and By-Laws, which are binding upon all constituent units and  
24 individual members of the State Grange but which may not conflict with the Digest of Laws.

25 \_\_\_\_\_  
26 <sup>2</sup> "UMF \_\_\_\_" refers to the corresponding Undisputed Material Fact set forth in Plaintiffs-in-  
Intervention's Separate Statement of Undisputed Material Facts.

27 <sup>3</sup> All references to the Digest of Laws below are to the 2012 version of that document.

(UMF 10.) Indeed, the Constitution of the California State Grange<sup>4</sup> expressly provides that:

“[t]he State Grange, as a chartered division of the National Grange, shall have the right and power, as the good of the Order requires, to adopt laws for the organization, administration and regulation of the affairs of the various divisions of the State Grange, ... *so long as they do not conflict with the laws of the National Grange.*” (UMF 11 [emphasis added].)

## **II. Rules Governing The Creation and Governance Of State Granges**

The National Grange’s rules control how State Granges are created, governed, and disestablished, and make clear that they are integral, subordinate parts of The Grange.

A State Grange is formed as a subordinate, constituent part (often called a “division”) of The Grange when it receives a Charter; an entity is not and may not operate as a Grange until it receives a Charter. (UMF 12.) The National Grange has the exclusive authority to issue Charters. (UMF 13.) All Charters require, and are issued in reliance upon the promise, that “members of each Grange at all times will faithfully comply with the Constitution of the Order, the Articles of Incorporation, By-Laws, and Grange Laws and Usage of the various Granges of the divisions of the Order as from time to time adopted.” (UMF 14.)

The Digest of Laws sets forth the requirements to join and hold office in any Grange. Section 1.6.2 of the Digest of Laws requires that “[a]ll candidates for membership and elected officers [of a State Grange] shall be required to agree at the time of election to membership or installation in office that at all times they will faithfully comply with the” Digest of Laws. (UMF 15.) The Constitution of the California State Grange sets forth virtually identical requirements for its members and officers. (UMF 16.) Section 10.4.3 of the Digest of Laws provides that “[a]ll members in good standing are eligible to hold office in the Grange to which they belong.” (UMF 17.) In contrast, individuals not in good standing may not hold office. (*Ibid.*)

To become an officer of a State Grange, an individual must be “installed before assuming the position and duties of the office.” (UMF 18.) All State Grange officers are installed in a

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<sup>4</sup> All references to the Constitution and By-Laws of the California State Grange in this brief are to the 2011 edition of those rules, which were in effect at all relevant times after 2011.

ceremony during which the candidate “solemnly pledge[s]” to “support the Constitution and By-Laws of the National Grange, and of this State Grange.” (*Ibid.*)

Once installed in office, State Grange officers are required to uphold the rules of The Grange. Section 4.10.5 provides that “[i]t is the duty of the Officers of [a State Grange] to ensure that the Constitution of the Order; Articles of Incorporation, By-Laws and Laws of the National Grange ... are observed and obeyed.” (UMF 19.) The California State Grange By-Laws impose similar requirements on its officers. (UMF 20.) As set forth in Section 8.1.1, “State Granges, or the Masters thereof, have no authority to suspend the Constitution of the Order, the Articles of Incorporation, By-Laws or Grange Laws as adopted by the National Grange as they may apply to said State Grange.” (UMF 21.) Accordingly, a State Grange or its officers cannot choose to follow certain provisions in the Digest of Laws, but not others. (*Ibid.*)

The National Grange also has the authority to suspend or revoke the Charters of State Granges. (UMF 22.) A State Grange may appeal any decision suspending or revoking its Charter. (UMF 23.) A State Grange may not operate as a Grange while its Charter has been suspended or revoked. (UMF 24.)

There is no provision in the rules of the National Grange or the California State Grange for the unilateral disaffiliation of any Grange. (UMF 25.)

### **III. Rules Governing Grange Property**

The rules of both the National Grange and the California State Grange contain numerous provisions that ensure that Grange property will be used for the general purposes of The Grange.

Sections 1.9.1 and 4.11.5 of the Digest of Laws both require that when a State Grange sells, encumbers, or transfers its real or personal, the proceeds from that transaction must be retained “for use in accordance with the general purposes of the Order.” (UMF 26.) In accordance with this rule, Sections 1.10.1, 1.11.4, and 4.5.9 require that when a State Grange has its Charter revoked, the real and personal property of that Grange will be retained “for use in accordance with the general purposes of the Order.” (UMF 29.)

1 The Digest of Laws also sets forth the procedure by which property is to be transferred  
2 from a State Grange following revocation of its Charter. Thus, Section 4.12.2 provides:

3 “Whenever a State Grange surrenders its Charter or otherwise becomes Inactive,  
4 the net assets of that Grange shall be retained by the Order for use in accordance  
5 with the general purposes of the Order, subject to the following terms and  
6 conditions:

7 “(A) All right, title and interest as to all real and personal property owned by a  
8 State Grange which surrenders its Charter or otherwise becomes Inactive shall  
9 become the Property of the National Grange. The National Grange shall hold  
10 such property in trust for the benefit of the Inactive State Grange until said State  
11 Grange is reorganized pursuant to Grange Law....

12 “(B) If the Inactive State Grange is reorganized within a period of seven years or  
13 such additional period of time as the Master of the National Grange may  
14 determine, then all trust property shall revert to the reorganized Grange, and the  
15 trust shall terminate.” (UMF 28.)

#### 16 **IV. History Of The California State Grange**

17 In 1873, as a result of the efforts of deputies of the National Grange, twenty-eight  
18 Subordinate Granges in California applied to the National Grange to form a State Grange. (UMF  
19 29.) The National Master approved the application, issued a Charter, and the California State  
20 Grange was formed as an unincorporated association on July 15, 1873. (*Ibid.*) At its first annual  
21 meeting, a National Grange deputy spoke and was presented with a gift as a token of  
22 appreciation for his efforts in organizing the California State Grange. (*Ibid.*) At the time, Article  
23 III of the National Grange’s Constitution provided that “[a]ll laws of State and Subordinate  
24 Granges must conform to this Constitution and the laws adopted by the National Grange.”  
25 (UMF 30.) Consistent with this requirement, the first By-Laws of the California State Grange  
26 obligated its Master “to see that the Constitution of the National Grange, the By-Laws of this  
27 State Grange, and the usages of Order, are observed and obeyed.” (UMF 31.)

1 In 1946, the California State Grange passed a motion “that the State Grange be  
2 incorporated, provided by-laws can be written that conform to by-laws of the California State  
3 Grange.”<sup>5</sup> (UMF 33.) On October 7, 1946, the California State Grange filed Articles of

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5 The Digest of Laws permits State Granges to “incorporate and adopt Articles of  
Incorporation and By-Laws for the organization, administration and regulation of their affairs,

1 Incorporation for a California nonprofit corporation called “California State Grange.” (UMF  
2 34.) The original Articles—still in effect today—explicitly tie the corporation to “the Order” and  
3 “the Grange,” and provide that the corporation is governed by the Constitution and By-Laws of  
4 the California State Grange, as amended from time to time. (*Ibid.*) Its directors are the Master  
5 and members of the Executive Committee of the California State Grange; upon installation to  
6 their offices, those individuals automatically become directors of the corporation. (UMF 35.)

7 On May 20, 1992, the California State Grange formed a nonprofit corporation called  
8 “California Grange Foundation” to hold the property of the California State Grange “irrevocably  
9 dedicated to charitable purposes.” (UMF 37.) The installation to the offices of Master and  
10 Executive Committee member of the California State Grange automatically constitutes election  
11 to the position of director of the Foundation. (UMF 38.)

12 Defendant Robert McFarland became a member of the Executive Committee of the  
13 California State Grange in 2008, was elected Master in 2009, and was re-elected in 2011. (UMF  
14 42, 44-45.) He was installed in office after each election only after swearing to “support the  
15 Constitution and By-Laws of the National Grange,” and became a director of the corporation and  
16 the Foundation upon installation. (*Ibid.*) Similarly, Defendants Jon Luvaas and Damian Parr  
17 were elected and installed as members of the Executive Committee in 2009 and 2011,  
18 respectively, and swore substantially the same oaths before assuming their offices. (UMF 44-  
19 45.) All of the Defendants promised to “faithfully comply” with the rules of the National Grange  
20 when they applied for membership in The Grange. (UMF 41.)

21 Between 1873 and 2012, the California State Grange acquired real and personal property  
22 and received charitable contributions to be used for the furtherance of the general purposes of  
23 The Grange. (UMF 49-50.) The California State Grange also participated during that time  
24 period as a constituent part of The Grange, benefitting in numerous economic and non-economic  
25 ways from that relationship. (UMF 51-53.)

26 provided that all such Articles of Incorporation and By-Laws ... shall conform to [the]  
27 Constitution and ... By-Laws ... as adopted by the National Grange.” (UMF 32.)

1 **V. Defendants' Withdrawal from The Grange**

2 Due to the failure of the California State Grange's officers to comply with the rules of the  
3 Order, the National Grange suspended its Charter on September 17, 2012, and then revoked it on  
4 April 5, 2013. (UMF 54, 57.)<sup>6</sup> The California State Grange did not appeal either action. (*Ibid.*)  
5 Defendants admit that they ceased to be members of The Grange as of April 5, 2013. (UMF 58.)

6 Nevertheless, in October 2013, at a supposed annual meeting of the California State  
7 Grange under Defendants' leadership, its By-Laws were purported to be amended to remove all  
8 references to the National Grange. (UMF 59.) The Constitution, however, was not amended,  
9 and the version adopted in 2011 remains in effect to this day. (UMF 61.)

10 On November 8, 2013, Defendants sent a signed "Position Statement" to the National  
11 Grange informing it that "we are no longer affiliated with the National Grange." (UMF 62.)  
12 Nevertheless, Defendants continue to retain control of the California State Grange's property and  
13 purport to operate the California State Grange. (UMF 63.)

14 **VI. The Reorganization Of The California State Grange**

15 Notwithstanding Defendants' actions, many Subordinate Granges in California wished to  
16 remain part of The Grange and were in compliance with its rules. (UMF 64.) Pursuant to his  
17 duty under the Digest of Laws, the National Master accepted the application of these Subordinate  
18 Granges to reorganize the California State Grange, and restored its Charter. (UMF 65.)

19 On July 12, 2014, Ed Komski was duly installed as Master of the California State  
20 Grange. (UMF 66.) Mr. Komski and the other officers installed on July 12, 2014, are members  
21 in good standing of The Grange, and are the individuals recognized by the National Grange as  
22 the proper and authorized officers of the California State Grange. (*Ibid.*)<sup>7</sup>

23  
24 <sup>6</sup> In October 2012, the suspended California State Grange held its annual meeting without  
25 authority and purported to elect Defendants Kathy Bergeron and Takashi Yogi to the Executive  
26 Committee. (UMF 55.) And, in March 2013, Defendant Bill Thomas was purportedly appointed  
27 to fill a vacant position on the Executive Committee. (UMF 56.)

<sup>7</sup> In 2014, a corporation called "The Grange of the State of California's Order of Patrons of  
Husbandry, Chartered" was created to hold and administer the property of the California State  
Grange until control of its other corporations could be recovered from Defendants. (UMF 67.)

1 **ARGUMENT**<sup>8</sup>

2 **I. Grange Property Must Remain Within The Grange.**

3 As demonstrated below, the Grange property in Defendants' control belongs to Plaintiffs-  
4 in-Intervention, for at least three reasons. First, well-settled California law requires courts to  
5 enforce rules just like the National Grange's to prevent departing members of a local unit from  
6 taking the association's property with them. Second, the California State Grange's own  
7 governing documents dictate the same result, as they expressly tie the corporation to the National  
8 Grange. Finally, much of the California State Grange's property is impressed with a charitable  
9 trust and may not be diverted from the general purposes of The Grange.

10 ***A. California Law Prohibits Members Who Leave a Voluntary Association From***  
11 ***Taking the Association's Property with Them.***

12 California courts embrace the sensible principle that the rules of a voluntary association  
13 constitute a binding contract between the association and its members, and should be applied to  
14 resolve disputes among them. (See, e.g., *California Dental Assn. v. American Dental Assn.*  
15 (1979) 23 Cal.3d 346, 353 [152 Cal.Rptr. 546].)

16 It therefore is not surprising that California courts enforce an association's rules in  
17 deciding property disputes between its members. *Episcopal Church Cases* (2009) 45 Cal.4th  
18 467 [87 Cal.Rptr.3d], for example, involved the attempted disaffiliation of a local parish from the  
19 Episcopal Church, a religious voluntary association. (*Id.* at pp. 472, 474.) Like the Grange, the  
20 Episcopal Church has a multi-tiered hierarchical structure, with the general church at the highest  
21 level and local churches, called "parishes," at the lowest level of the hierarchy. (*Id.* at p. 474.)  
22 The highest level of the Episcopal Church adopts a constitution and "canons" that are binding on  
23 the lower levels of the hierarchy. (*Id.* at pp. 474-475.) These rules contain numerous provisions  
24 restricting the use of property by parishes, including a provision expressly providing that parish

25 <sup>8</sup> As the Court is well aware, summary judgment should be granted "if all the papers  
26 submitted show that there is no triable issue as to any material fact and that the moving party is  
27 entitled to judgment as a matter of law." (CCP § 437c(c).) A motion for summary adjudication  
applies the same standard to individual causes of action. (CCP § 437c(f)(2).)

1 property must be used for the mission of the Episcopal Church and remain subject to its  
2 constitution and canons. (*Id.* at pp. 475, 487-488.)

3 Over fifty years after the parish's formation, the board of directors of the parish  
4 corporation voted to disaffiliate from the Episcopal Church. (*Id.* at pp. 475-476.) In considering  
5 the dispute, the California Supreme Court closely analyzed the Episcopal Church's rules to  
6 determine who was entitled to control the parish's property. In particular, the Supreme Court  
7 found that the totality of the Episcopal Church's rules "strongly supports the conclusion that,  
8 once defendants left the general church, the property reverted to the general church." (*Id.* at p.  
9 487.) Thus, it concluded that the parish "agreed from the beginning of its existence to be part of  
10 a greater denominational church and to be bound by that greater church's governing instruments.  
11 Those instruments make clear that a local parish owns local church property in trust for the  
12 greater church and may use that property only so long as the local church remains part of the  
13 greater church." (*Id.* at p. 489; see also *Huber v. Jackson* (2009) 175 Cal.App.4th 663, 676, 683  
14 [96 Cal.Rptr.3d 346] [affirming summary judgment for the Episcopal Church where the  
15 incorporated parish "agreed from the time it became a parish to be an integral part of the  
16 Episcopal Church ... and to be bound by [its] governing documents"].)

17 The principle that a voluntary association's rules are binding on its members is not  
18 limited to religious denominations; it is equally applicable to fraternal organizations like The  
19 Grange. *Brown v. Hook* (1947) 79 Cal.App.2d 781 [180 P.2d 982] involved the attempted  
20 disaffiliation by a local unit of an international labor union. Following its vote to secede, the  
21 local lodge surrendered its charter. (*Id.* at p. 783.) The constitution and by-laws of the union's  
22 highest authority, the International, provided that upon loss of its charter, "all funds and property  
23 belonging to such local lodge" shall be held by the union until the local lodge returned to good  
24 standing. (*Id.* at p. 784.) Based on this and numerous other provisions tying the local lodge to  
25 the general organization, the court concluded that:

26 "[a] study of these and other parts of the constitution shows a closely integrated  
27 relationship between the International and the local lodges, ... and that while  
some of the duties and relationships of members and local lodges to and towards

1 International are contained in the ‘Constitution for Local Lodges,’ *the two*  
2 *constitutions form one integral whole*. They evidence the fact that International  
3 holds a tight rein over the locals and that they have no being separate and apart  
4 from International.” (*Id.* at p. 787 [emphasis added].)

5 Accordingly, it held that, “[w]hile there appears to be no express provision in the constitution to  
6 the effect that a local may not withdraw or secede, the whole framework evidences that the local  
7 and their members are so integral a part of the International that they cannot do so and still  
8 maintain their property.” (*Id.* at p. 789.)<sup>9</sup>

9 Just like the organizations discussed above, The Grange is a hierarchical, voluntary  
10 association in which subordinate units promise to abide by the rules of highest level of the  
11 organization in order to obtain membership in the organization, and all the benefits that entails.  
12 It is undisputed here that (1) the California State Grange was at all times subject to the National  
13 Grange’s rules; (2) the National Grange’s rules explicitly required that, upon revocation of its  
14 Charter, all property was to be held by the National Grange until the California State Grange was  
15 reorganized; and (3) the California State Grange has been reorganized and its Charter restored.

16 First, there is no genuine dispute that the California State Grange was at all times bound  
17 by the rules of the National Grange. The California State Grange agreed to comply with those  
18 rules “from the beginning of its existence” in 1873. (UMF 31; *Episcopal Church Cases*, *supra*,  
19 45 Cal.4th at p. 489.) Its rules contained numerous provisions tying it to the National Grange at  
20 all times after 1873. (UMF 31, 36.) In fact, its Constitution *still* provides that the California  
21 State Grange is a “chartered division of the National Grange” and subject to its rules. (UMF 61.)

22 <sup>9</sup> See also *Most Worshipful Sons of Light Grand Lodge v. Sons of Light Lodge No. 9* (1953)  
23 118 Cal.App.2d 78, 85 [257 P.2d 464] [holding property of subordinate lodges must remain with  
24 fraternal organization and noting “[w]hen a schism has occurred in a ... benevolent association,  
25 which has united with and assented to the control and supervision of a general organization, and  
26 acquired property since its union and assent to the government of the general organization, ... the  
27 title to the property remains in the name of the association, and that faction which has remained  
loyal and adhered to the laws, usages, and customs of the general organization constitutes the  
true association, and is alone entitled to the use and enjoyment of the association’s property”]  
[citation omitted]; 7 C.J.S. (2014) *Associations*, § 44 [“members who withdraw [from a  
voluntary association] thereby lose their rights to associate property, title to which stays in the  
members remaining in the association”].

1           The California State Grange has recognized its subordinate status even since Mr.  
2 McFarland was first installed in office. Indeed, in a lawsuit against a Subordinate Grange filed  
3 in 2009, the California State Grange alleged in a verified complaint that it “is a division of the  
4 Order of Patrons of Husbandry,” the National Grange “is the controlling and supreme law  
5 making division of the Order,” and the State Grange’s rules and activities must “not conflict with  
6 the laws of the National Grange.” (UMF 43.) Of course, ““a pleader is bound by well pleaded  
7 material allegations”” and ““a fact admitted by the pleadings should be treated as ‘found.’”  
8 (*Valerio v. Andrew Youngquist Construction* (2002) 103 Cal.App.4th 1264, 1271 [127  
9 Cal.Rptr.2d 436].) Further, Mr. McFarland requested in 2010 that the National Grange issue a  
10 letter identifying the California State Grange as a subordinate unit in The Grange (UMF 46), and  
11 also has recognized that Grange property may only be sold in accordance with the National  
12 Grange’s rules (UMF 47.) And, even in September 2012, mere days before the suspension of the  
13 California State Grange’s Charter, the members’ information section of its website listed  
14 “National Digest of Laws 2012” as the first set of rules under the “Bylaws” heading. (UMF 48.)  
15 The conclusion is inescapable that the rules of the California State Grange and the National  
16 Grange “form one integral whole.” (*Brown, supra*, 79 Cal.App.2d at p. 787.) Thus, there can be  
17 no question that, as this Court has recognized, “[a]ll parties were subject to the Bylaws of the  
18 National Grange and the Order as a whole” at all times relevant to this dispute. (*Minute Order*  
19 [Dkt. # 230] (Jan. 15, 2015).)

20           Second, it is undisputed that the National Grange’s rules required that the property held  
21 by the California State Grange remain within The Grange. In fact, Section 4.12.2 of the Digest  
22 of Laws sets forth exactly what was to happen to the California State Grange’s property upon  
23 revocation of its Charter: it would revert to the National Grange to hold in trust until the  
24 California State Grange could be reorganized. (UMF 28.) This rule is exactly like the provisions  
25 enforced in *Episcopal Church Cases* and *Brown*, and should be enforced just as those rules were.

26           Third, it is also undisputed that the California State Grange’s Charter was revoked on  
27 April 5, 2013 (UMF 57), and that the California State Grange was reorganized and its Charter

1 was restored in 2014 (UMF 65-66). Plaintiffs-in-Intervention are that reorganized California  
2 State Grange and its Master (UMF 66), and are entitled to possession of the California State  
3 Grange's property under the National Grange's binding rules.

4 The fact that the California State Grange is incorporated does not change this result. In  
5 *National Grange of Order of Patrons of Husbandry v. O'Sullivan Grange* (1983) 35 Wn.App.  
6 444 [667 P.2d 1105], the Washington Court of Appeals considered the case of a Subordinate  
7 Grange (O'Sullivan Grange) that attempted to transfer title to its Grange hall to another  
8 organization, in violation of the National Grange's rules. (*Id.* at pp. 447-448.) O'Sullivan  
9 Grange argued that the Digest of Laws "did not limit [its] corporate power to amend its own  
10 bylaws" to eliminate the National Grange's property restriction. (*Id.* at p. 449.) The court  
11 rejected this argument out of hand, finding that the National Grange rule existed "[t]o preserve  
12 the integrity of the Order for the benefit of existing and future members" by "impress[ing]  
13 property acquired by all granges with a trust." (*Id.* at p. 453.) The mere fact that a Subordinate  
14 Grange might be incorporated under state law did not alter this result. Noting that O'Sullivan  
15 Grange's founding members had "expressly agreed to abide by the constitution and laws  
16 incorporated into the Digest when they applied for and accepted their charter," that all of its  
17 current members had taken an oath to that effect, and that O'Sullivan Grange had a voice in all  
18 subsequent changes to the Digest of Laws through The Grange's democratic structure, the court  
19 of appeals held:

20 "O'Sullivan's effort to amend its corporate bylaws by deleting the provision  
21 requiring it to comply with ... the Digest could not change its contract with the  
22 Order. ***To the contrary, incorporation of a subordinate organization does not***  
23 ***change its purpose or status as an extension of the supreme body. Nor does it***  
24 ***affect the charter and oath to obey the constitution and bylaws of the Order.***  
25 ***Those laws still control.***" (*Id.* at p. 451 [emphasis added and citations omitted];  
26 see also *id.* at p. 452 ["O'Sullivan's incorporation did not confer powers upon it  
27 beyond those conferred by the Digest. Perforce, it could not amend its bylaws to  
change its contractual obligations with the National Grange ...."].)

28 This reasoning applies with equal force under California law. Indeed, the rule that the  
29 property of a subordinate unit in a voluntary association must remain within the association  
30 "applies whether the subordinate association be a corporation or simply a voluntary

association.”” (*Most Worshipful Sons*, *supra*, 118 Cal.App.2d at p. 85 [citation omitted]; cf. *Wheelock v. First Presbyterian Church of L.A.* (1897) 119 Cal. 477, 483 [51 P. 841] [noting religious corporations are “permitted as a convenience to assist in the conduct of the temporalities of the church.... The corporation is a subordinate factor in the life and purposes of the church proper.... Its function and object is to stand in the capacity of an agent holding title to the property, with power to manage and control the same in accordance with the interest and spiritual ends of the church”].) Just as in *O’Sullivan Grange*, then, this Court should order that the property must remain in The Grange.

**B.     *The California State Grange’s Articles of Incorporation, Constitution, and By-Laws Require that its Property be Used for the Purposes of The Grange.***

Articles of Incorporation may set forth “any ... provision, not in conflict with law, for the management of the activities and for the conduct of the affairs of the corporation.” (Corp. Code § 7132(c)(6).) Of course, the articles may incorporate the corporation’s governing rules from other documents, such as a constitution or by-laws.

When the California State Grange incorporated in 1946, Sections 8 and 9 of its articles—still in effect to this day—stated that the rules governing the corporation would be the same ones that had governed the unincorporated association for its first 73 years of existence: the Constitution and By-Laws of the California State Grange, including any future amendments. (UMF 34.) It is undisputed that the 2011 version of the California State Grange Constitution has been in effect at all times since 2011 through the present day. (UMF 61.) It is also undisputed that the California State Grange By-Laws applied from 2011 until October 11, 2013, when they were purportedly amended to remove all reference to the National Grange.<sup>10</sup> (UMF 60.) Under the plain terms of the rules set forth in those documents, the California State Grange’s property must remain within The Grange.

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<sup>10</sup> As explained in Part II, *infra* at pp. 16-17, the attempt to amend the By-Laws in October 2013 were *ultra vires*, and therefore void and of no effect.

1           The California State Grange’s Constitution provides that the organization is called “The  
2 California State Grange *of the Order of Patrons of Husbandry*,” operates “as a chartered  
3 division of the National Grange,” and may “adopt laws ... *so long as they do not conflict with*  
4 *the laws of the National Grange*.” (UMF 11 [emphasis added].) The Constitution also obligates  
5 all members and officers of the California State Grange to agree, as a condition of their  
6 membership or installation in office, “that at all times they will faithfully comply with the  
7 Constitution, By-Laws, and Codes of the Grange at all levels,” including the National Grange.  
8 (UMF 16.) Prior to October 2013, § 14.3 of its By-Laws required the same promise. (UMF 17.)

9           The import under the Corporations Code of these provisions, as well as dozens of others  
10 invoking the rules of the National Grange, is clear: they rendered the California State Grange  
11 subject to the rules and authority of the National Grange. In agreeing to abide by the rules of the  
12 National Grange, the California State Grange was exercising powers permitted to it under the  
13 Code, including the power to “[a]ssume obligations, enter into contracts,” and “[p]articipate with  
14 others in any ... association ... whether or not such participation involves sharing or delegation  
15 of control with or to others.” (§ 7140(i) & (j).) Accordingly, the National Grange’s rules were  
16 binding on the corporation pursuant to Sections 8 and 9 of its articles of incorporation.

17           It is undisputed that the National Grange suspended the California State Grange’s Charter  
18 on September 17, 2012, and revoked it on April 5, 2013. (UMF 54, 57.) Under the plain terms  
19 of its Constitution and By-Laws in effect on those dates, the California State Grange was subject  
20 to the rules of the National Grange. Thus, upon suspension of its Charter, the California State  
21 Grange could no longer operate as a Grange (UMF 24), and upon revocation, its property  
22 reverted to the National Grange until the California State Grange was reorganized (UMF 28).

23           Even assuming, *arguendo*, that the amendments to the By-Laws in October 2013 were  
24 properly made (and they were not), the same result still applies because *the Constitution was*  
25 *never amended*. Although the preamble of the amended By-Laws attempts to cast the  
26 Constitution as merely a set of “guidelines” (see UMF 59), it is axiomatic that the constitution of  
27 an organization is superior to its by-laws, and must prevail any time they are in conflict. (See

1 *Bornstein v. District Grand Lodge No. 4, Independent Order B'nai B'rith* (1906) 2 Cal. App.  
2 624, 627 [84 P. 271] [a by-law must “not contravene or be inconsistent with the charter or any  
3 existing law of the state. The power to make by-laws is to make such as are not inconsistent with  
4 the constitution and the law”] [citation omitted]; Robert, Robert’s Rules of Order Newly Revised  
5 (11th ed. 2011) p. 14 [“In organizations that have both a constitution and bylaws as separate  
6 documents, however, ***the constitution is the higher of the two bodies of rules and supersedes***  
7 ***the bylaws.***”] [emphasis added].) Here, it is undisputed that the constitutional provisions  
8 requiring the California State Grange to be “a chartered division of the National Grange” subject  
9 to its rules are still in effect, and they must prevail over anything to the contrary in the By-Laws.

10 **C. *California Law Requires that Charitable Donations be used Only for the***  
11 ***Purposes for Which They Were Donated.***

12 Business and Professions Code Section 17510.8 provides that “[t]he acceptance of  
13 charitable contributions by a charity or any person soliciting on behalf of a charity establishes a  
14 charitable trust and a duty on the part of the charity ... to use those charitable contributions for  
15 the declared charitable purposes for which they are sought.” Similarly, California has expressed  
16 a strong public policy that trust property may only be used “to carry out the objects for which the  
17 [corporation] was created.” (*Lynch v. Spilman* (1967) 67 Cal.2d 251, 260 [62 Cal.Rptr. 12].)  
18 Accordingly, when a mutual benefit corporation accepts charitable contributions, such money  
19 and property is impressed with a charitable trust. (Corp. Code § 7135.)

20 It is undisputed that the California State Grange received charitable donations prior to the  
21 suspension of its Charter. (UMF 50.) Indeed, hundreds of thousands of dollars of these  
22 charitable funds is held by the California Grange Foundation and “irrevocably dedicated to  
23 charitable purposes.” (UMF 37, 39.) The charitable contributions that the California State  
24 Grange solicited and received between 1873 and September 17, 2012—from hundreds or  
25 thousands of individuals over more than a century—were given to an organization serving the  
26 general purposes of The Grange. The California State Grange’s leadership and members were  
27 not free to divert those assets to another cause of their choosing.

1 **II. The California State Grange's Corporations Belong To Plaintiffs-In-Intervention.**

2 The issue of whether the California State Grange's property must be held and used for the  
3 general purposes of The Grange is closely and logically related to the issue of corporate  
4 governance. It is undisputed that, upon installation into office, the Master and Executive  
5 Committee members of the California State Grange automatically become directors of its  
6 corporation and the California Grange Foundation. (UMF 35, 38.) At all times since 1946, the  
7 officers of the California State Grange, including Defendants, have taken their offices only after  
8 promising to "faithfully comply" with the rules of the National Grange." (UMF 15, 18, 36.) In  
9 such situations, corporate officers and members who act in violation of their oaths cease to be  
10 officers and members of the corporation, and may not act on its behalf.

11 In *Huber*, for example, an Episcopal parish attempted to disaffiliate and join another  
12 religious denomination. (*Supra*, 175 Cal.App.4th at p. 670.) In addition to the rules governing  
13 the use of parish property discussed in connection with *Episcopal Church Cases* (*supra* at pp. 8-  
14 9), the Church's rules also required that, to hold office, an individual must be "in good standing"  
15 and agree to "well and faithfully perform the duties of that office in accordance with the  
16 Constitution and Canons of [the Episcopal] Church." (*Id.* at p. 680 [internal quotation marks and  
17 citation omitted].) The Court of Appeal "conclude[d] as a matter of law that when defendants  
18 voted for disaffiliation, they denounced their prior promises to be subject to the governing  
19 documents of the national church and the diocese, abandoned their membership in the  
20 corporation, and lost the power and authority to be directors of the corporation, as they were no  
21 longer members in good standing of the Episcopal Church. Thus, their purported amendment of  
22 the articles of incorporation and bylaws to make the corporation part of the Anglican Church  
23 were a legal nullity, or ultra vires." (*Id.* at p. 683.)

24 Likewise, the Court of Appeal has held that where membership in a voluntary association  
25 is conditioned on obedience to the rules of the highest level of the organization, a member's vote  
26 in favor of disaffiliation was tantamount to resignation from the local corporation. *Korean*  
27 *United Presbyterian Church v. Presbytery of the Pacific* (1991) 230 Cal.App.3d 480, 506 [281

1 Cal.Rptr. 396]. In particular, the court noted that when the leadership of the breakaway unit  
2 convinced a majority of members to vote to disaffiliate, “[a]t that moment, if not before, these  
3 members had renounced any further obligation to be subject to be subject to the doctrines or  
4 discipline of [the general church], and, in effect, renounced their membership in the ... nonprofit  
5 corporation, since its articles of incorporation required adherence to the doctrines and discipline  
6 of [the general church] as a condition of membership. Having abandoned their membership in  
7 the ... corporation, they lost all power and ability to determine its future status.” (*Ibid.*)

8         These decisions are on all fours with this case. It is undisputed here that Defendants and  
9 their followers promised to “faithfully comply” with the rules of the National Grange in order to  
10 become members of The Grange. (UMF 15, 41.) Likewise, Defendants made the same promise  
11 again as a condition of their installation in office, and were required to be members “in good  
12 standing” of The Grange at all times. (UMF 15, 18, 42, 44-45.) Those vows were not simply  
13 words to be disregarded at Defendants’ whim; they were a “solemn[] pledge” (UMF 18) that  
14 obligated Defendants to always work within the confines of the National Grange’s rules. Their  
15 attempt to remove the California State Grange from The Grange violated those obligations and,  
16 exactly like the defendants in *Huber*, at that time they ceased to be officers of the corporation  
17 entitled to act on its behalf. Similarly, the members who voted in October 2013 to disaffiliate,  
18 just like the congregation in *Korean United*, violated their promises to The Grange and at that  
19 point ceased to be members of the corporation. Accordingly, all actions taken by Defendants  
20 and their followers were null and void and of no effect.

21         Further, after Defendants’ removal from their offices, those offices remained vacant until  
22 the California State Grange was reorganized and new officers were elected. It is undisputed that  
23 Mr. Komski and the other Executive Committee members installed in office in July 2014 are the  
24 officers of the reorganized California State Grange and recognized as such by the National  
25 Grange. (UMF 66.) Upon installation into those offices, they automatically became directors of  
26 the California State Grange corporation and the California Grange Foundation. (UMF 35, 38.)  
27 Thus, they are entitled to control of those entities.

1 **III. The Court Should Enter Judgment On Each Cause Of Action.**

2 As demonstrated above, Grange property must remain within The Grange and  
3 Defendants' efforts to retain control of the California State Grange and its property were *ultra*  
4 *vires*, null, and void. Accordingly, Plaintiffs-in-Intervention are entitled to summary judgment  
5 on each of their causes of action.

6 **A. *First Cause of Action: Declaratory Relief***

7 Under California law, "[a]ny person ... who desires a declaration of his or her rights or  
8 duties with respect to another, or in respect to, in, over or upon property ... may ask for a  
9 declaration ... and the court may make a binding declaration of these rights or duties." (CCP  
10 § 1060.) Plaintiffs-in-Intervention seek a declaration concerning the status of the California  
11 State Grange and the control of its property. As explained in Parts I and II, the undisputed  
12 material facts establish that the California State Grange was subject to the National Grange's  
13 rules, Defendants' attempts to remove the California State Grange and its property from The  
14 Grange were null and void, and all property must remain with the California State Grange  
15 following the restoration of its Charter. Plaintiffs-in-Intervention are entitled as a matter of law  
16 to a declaration to this effect.

17 **B. *Second Cause of Action: Breach of Fiduciary Duty***

18 "The elements of a cause of action for breach of fiduciary duty are the existence of a  
19 fiduciary relationship, its breach, and damage proximately caused by that breach." (*Hasso v.*  
20 *Hapke* (2014) 227 Cal.App.4th 107, 140 [173 Cal.Rptr.3d 356].) A person undertakes a  
21 fiduciary obligation when he "knowingly undertake[s] to act on behalf and for the benefit of  
22 another, or ... enter[s] into a relationship which imposes that undertaking as a matter of law."  
23 (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 221  
24 [197 Cal.Rptr. 783].) Defendants were admitted to membership and installed in office in the  
25 California State Grange in reliance on their promise to "faithfully comply" with the rules of the  
26 National Grange. (UMF 15, 18, 41-42, 44-45.) Upon making that promise, Defendants  
27 undertook to act for the benefit of the National Grange and the California State Grange.

1 However, they have failed to comply with those promises. (UMF 54, 57-58, 68.) The violation  
2 of their fiduciary obligations has caused damage to the California State Grange, including  
3 through the use of its property for purposes other than those of The Grange. (UMF 69.)

4 **C. Third Cause of Action: Accounting**

5 “A cause of action for an accounting requires a showing that a relationship exists between  
6 the plaintiff and defendant that requires an accounting, and that some balance is due the plaintiff  
7 that can only be ascertained by an accounting.” (*Teselle v. McLoughlin*, 173 Cal.App.4th 156,  
8 179 [92 Cal.Rptr.3d 696].) It is undisputed that the property of the California State Grange has  
9 been diminished while improperly under Defendants’ control. (UMF 70-71.) Plaintiffs-in-  
10 Intervention are entitled to a determination as to the amount of that diminution.

11 **D. Fourth Cause of Action: Conversion**

12 Conversion is the wrongful exercise of control over another’s personal property. (*Moore*  
13 *v. Regents of the University of California* (1990) 51 Cal.3d 120, 136 [271 Cal.Rptr. 146].) “The  
14 gravamen of a conversion claim is the wrongful interference with another’s property rights.”  
15 (*AmerUS Life Ins. Co. v. Bank of Am., N.A.* (2006) 143 Cal.App.4th 631, 642 [49 Cal.Rptr.3d  
16 493].) Since September 17, 2012, Defendants have refused to relinquish control over the  
17 California State Grange’s property, and thus have interfered with Plaintiffs-in-Intervention’s  
18 “ownership or right of possession” to the property. (UMF 72-73; *Moore, supra*, 51 Cal.3d at p.  
19 136.)

20 **E. Fifth Cause of Action: Ejectment**

21 “The action of ejectment ... is confined to cases where the claimant has a possessory title  
22 —that is to say, a right of entry upon the lands.” (*Payne v. Treadwell* (1855) 5 Cal. 310, 311  
23 [1855 Cal. LEXIS 122].) “The gravamen of the action is the withholding of the possession from  
24 the plaintiff ....” (*Frazier v. Lynch* (1893) 97 Cal. 370, 372 [32 P. 319].) Defendants are  
25 keeping the California State Grange from accessing its real property (UMF 74-76), so the Court  
26 should eject them.  
27

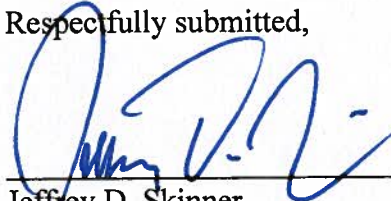
1 **IV. The Court Should Dismiss The Butte County Complaint.**

2 Defendants' entity—which they purport to be the corporation called “California State  
3 Grange”—filed a complaint in Butte County (later transferred to this Court) against the  
4 corporation created by the California State Grange in 2014 and two of its directors, Mr. Komski  
5 and Lillian Booth. All of the claims in that complaint stem from the central allegations that  
6 Defendants' entity is the “true” California State Grange while Mr. Komski, Ms. Booth, and the  
7 2014 corporation are wrongfully holding themselves out as representatives of the California State  
8 Grange. (See Butte Compl. at ¶¶ 7, 9-11.) Thus, summary judgment in favor of Plaintiffs-in-  
9 Intervention on their causes of action necessarily will require dismissal of these claims, as well.

10 **CONCLUSION**

11 For all of the reasons stated above, the Court should grant summary judgment in favor of  
12 Plaintiffs-in-Intervention on all claims.

13 Respectfully submitted,

14 

15  
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17  
18 *Attorney for Plaintiffs-in-Intervention The  
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