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Jon Luvaas, Gerald Chernoff, Damian Parr,

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8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF SACRAMENTO**

10
11 THE NATIONAL GRANGE OF THE ORDER)
12 OF PATRONS OF HUSBANDRY, a)
Washington, D.C., non-profit corporation,)

13 Plaintiff,

14 and

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

17 Plaintiffs-in-Intervention.)

18 v.)

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

23 Defendants.)

24 AND CONSOLIDATED ACTION.)
25
26
27
28

**Case No.: 34-2012-00130439 (Consolidated
with Butte County Case No. 163389)**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF JON
LUVAAS', DAMIAN PARR'S, TAKASHI
YOGI'S, KATHY BERGERON'S AND
BILL THOMAS' MOTION FOR
SUMMARY JUDGMENT AGAINST
PLAINTIFFS-IN-INTERVENTION, OR,
IN THE ALTERNATIVE, SUMMARY
ADJUDICATION**

RESERVATION NUMBER 2022105

Date: May 1, 2015

Time: 2:00 p.m.

Dept: 53

Judge: David I. Brown

Date Action Filed: October 1, 2012

Trial Date: June 1, 2015

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1 Defendants Jon Luvaas, Damian Parr, Takashi Yogi, Kathy Bergeron, and Bill Thomas¹
2 (collectively, the “Individual Defendants”) respectfully submit the following Memorandum of Points
3 and Authorities in support of their Motion for Summary Judgment or, in the Alternative, Summary
4 Adjudication.

5 **I. INTRODUCTION**

6 Defendant California State Grange is a California non-profit mutual benefit corporation.
7 Pursuant to California law, it has continuously operated under its Articles of Incorporation and Bylaws
8 since 1946. In this dispute, a separate Washington D.C. corporation, Plaintiff National Grange, is
9 attempting to seize control of California State Grange. To assist National Grange, Plaintiffs-in-
10 Intervention have filed a Complaint-in-Invention – suing only individual past and present volunteer
11 board members of the California State Grange – in which they claim to *be* the California State Grange.
12 Despite this attempt to cause confusion, each of the five causes of action in the Complaint-in-
13 Intervention fail as a matter of law.

14 First, all five causes of action are barred by the Individual Defendants’ Second Affirmative
15 Defense of lack of standing. Whoever filed the Complaint-in-Intervention purportedly on behalf of
16 Plaintiff-in-Intervention “The California State Grange, a California non-profit corporation” is
17 assuming a false identity. The only California non-profit corporation by that name is already a party to
18 this action as a Defendant. National Grange sued the California State Grange, a non-profit mutual
19 benefit corporation, recognizing its standing and existence as a California corporation. The Plaintiff-
20 in-Intervention who has co-opted Defendant California State Grange’s name has no authority or
21 standing to bring claims on behalf of California State Grange. Plaintiff-in-Intervention Ed Komski
22 also lacks standing to bring the causes of action against the Individual Defendants. He lacks standing
23 to pursue the claims directly because he is not a real party in interest.

24 Second, even if the Plaintiffs-in-Intervention had standing, as a matter of California law, they
25 still could not establish any of their causes of action. Each of the claims is premised on Plaintiffs-in-
26

27 ¹ This Motion is not being brought on behalf of Defendant Gerald Chernoff or Defendant The California State Grange.
28 Defendant Chernoff has not been named or served with the Complaint-in-Intervention and The California State Grange
is not named as a defendant in any of Plaintiff-in-Intervention’s five causes of action.

1 Intervention's apparent position that when National Grange revoked California State Grange's
2 "charter" as an affiliated organization, California State Grange magically ceased to exist as a
3 California corporation and National Grange automatically became entitled to all of its property. This
4 theory is contrary to California law. The only way in which a California non-profit mutual benefit
5 corporation may cede its authority in this way is through a provision in its Articles of Incorporation. It
6 is an undisputed fact that California State Grange's Articles of Incorporation have never contained any
7 such provision. As a result, California State Grange has maintained its rights as an independent
8 California corporation including to operate as an organization and to own and control its own property.
9 Plaintiffs-in-Intervention's claims, which seek to infringe on these rights, all fail as a matter of law.

10 **II. STATEMENT OF BACKGROUND AND UNDISPUTED MATERIAL FACTS**

11 The California State Grange is a California nonprofit mutual benefit corporation. Statement of
12 Undisputed Material Facts ("UMF") 1. It has been a California corporation since its incorporation in
13 1946. UMF 2. The California State Grange is the only corporation registered with the state of
14 California with this name. UMF 3. Its entity number with the California Secretary of State is
15 C0210454. UMF 4. The California State Grange's official Statement of Information filed with the
16 California Secretary of State reflects that Robert McFarland is the corporation's President. UMF 5.
17 For the purposes of this motion, "California State Grange" shall refer to the California nonprofit
18 mutual benefit corporation, entity number C0210454.

19 As a California nonprofit mutual benefit corporation, California State Grange does not have
20 any shareholders; it has only "members." See Corp. Code § 7310. The members of the California
21 State Grange are 185 California non-profit corporations, which themselves are comprised of
22 approximately 10,000 individuals. Declaration of Robert McFarland in Support of Jon Luvaas',
23 Damian Parr's, Takashi Yogi's, Kathy Bergeron's, and Bill Thomas' Motion for Summary Judgment
24 Against Plaintiffs-in-Intervention Or, in the Alternative, Summary Adjudication., ¶ 2. Plaintiff The
25 National Grange of the Order of Patrons of Husbandry ("National Grange") has never been a member
26 of the California State Grange. UMF 6.

1 Pursuant to its Articles of Incorporation and Bylaws, the California State Grange has a
2 volunteer five-person board of directors. UMF 7. The directors, along with the two officers known as
3 the "Master" and "Overseer" comprise the California State Grange's Executive Committee. UMF 8.

4 As required by California law and its Bylaws, the California State Grange holds an annual
5 meeting every year, which is attended by its members. UMF 9. At the annual meetings, the California
6 State Grange holds elections in which its members vote to fill the open positions on the Executive
7 Committee. UMF 10.

8 At the California State Grange's annual meetings in October of 2011 and 2013, its members
9 re-elected Defendant McFarland to the position of President (Master) of the California State Grange.
10 UMF 11.

11 At the California State Grange's annual meeting in October of 2011, its members and elected
12 Defendants Luvaas and Parr to the California State Grange's Executive Committee. UMF 12, 13.

13 At the California State Grange's annual meeting in October of 2012, its members elected
14 Defendants Yogi and Bergeron to the California State Grange's Executive Committee. UMF 14, 15.

15 At the California State Grange's annual meeting in October of 2013, its members elected
16 Defendant Thomas to the California State Grange's Executive Committee. UMF 16.

17 Plaintiff National Grange is a Washington D.C. non-profit corporation. UMF 17. National
18 Grange has adopted a "Digest of Laws" which includes its "Constitution," By-Laws, and Articles of
19 Incorporation, and other "laws." CII, ¶ 12.

20 Neither the California State Grange's Articles of Incorporation nor its Bylaws contain any
21 provision that, upon revocation of its charter by National Grange, California State Grange must
22 dissolve or transfer its property to National Grange. UMF 18, 19, 20.

23 A dispute arose between National Grange and California State Grange in 2012. CII, ¶¶ 97-
24 100. As a result of this dispute, National Grange suspended the California State Grange's charter² on
25 September 17, 2012, and revoked the California State Grange's charter on April 5, 2013. CII, ¶¶ 101,
26

27 ² California State Grange's "charter" from National Grange is an amorphous concept wholly distinct from California
28 State Grange's Articles of Incorporation, which have been filed with the California Secretary of State since 1946.
Under California law, corporations exist by virtue of their Articles of Incorporation. Corp. Code § 7120(c).

1 111. Despite the revocation of its charter, the Executive Committee of the California State Grange has
2 continued to operate the California State Grange. UMF 21. The California State Grange has not
3 dissolved as a corporation under California corporations law. UMF 22. The Executive Committee has
4 taken no action to dissolve or otherwise change the corporate status of the California State Grange.
5 UMF 23. The members of the California State Grange have not voted to dissolve the California State
6 Grange. UMF 24. No one has filed in court any complaint for involuntary dissolution of the
7 California State Grange. UMF 25.

8 On October 1, 2012, National Grange initiated this action by its Complaint for Declaratory
9 Judgment and Injunction ("Complaint") against *Defendant* California State Grange. On October 2,
10 2012, National Grange served the Summons and Complaint on California State Grange by personal
11 delivery to California State Grange's principal place of business as registered with the Secretary of
12 State. UMF 26.

13 In early 2014, a corporation called The Grange of the State of California's Order of Patrons of
14 Husbandry, Chartered ("TGSC") was incorporated in California. UMF 27. TGSC was formed by,
15 among others, National Grange Master Ed Luttrell and Plaintiff-in-Intervention Ed Komski. UMF 28.
16 Luttrell is the Chief Executive Officer of TGSC. UMF 29. Komski is its President. UMF 30.

17 On or about October 2, 2014, an Application for Leave to Intervene and was filed in this
18 action, purportedly on behalf of Ed Komski and "The California State Grange." This was despite the
19 fact that the actual California State Grange was already a defendant in this action (having been sued in
20 its corporate capacity and recognized as a California corporation able to be sued by Plaintiff National
21 Grange). *See* Complaint, filed October 1, 2012. California State Grange has never authorized or
22 consented to the filing of the Application to Intervene, the subsequently filed Complaint-in-
23 Intervention, or the prosecution of the Complaint-in-Intervention. UMF 31.

24 **III. PERTINENT ALLEGATIONS IN THE COMPLAINT-IN-INTERVENTION AND**
25 **ANSWER THERETO**

26 According to the Complaint-in-Intervention, the Plaintiffs-in-Intervention in this action are
27 "The California State Grange, a California non-profit corporation" and Ed Komski. CII, ¶¶ 1, 3, 4.
28

1 Notably, the Complaint-in-Intervention does not allege that TGSC is one of the Plaintiffs-in-
2 Intervention. See CII, ¶¶ 1, 3, 128.

3 The Complaint-in-Intervention arises from National Grange's "suspension" and "revocation"
4 of California State Grange's charter.

5 Plaintiffs-in-Intervention allege that Defendants Bergeron, Yogi, and Thomas have never been
6 directors of California State Grange because they were elected or appointed while California State
7 Grange's charter was suspended. CII, ¶¶ 101-109. They allege that, under the rules of National
8 Grange's own Digest of Laws, upon National Grange's revocation of California State Grange's
9 charter, California State Grange's property became that of National Grange. CII, ¶ 112.

10 Plaintiffs-in-Intervention further allege that National Grange has issued a charter to a new
11 organization in California. CII, ¶ 125. That organization has purportedly elected new directors and
12 Plaintiff-in-Intervention Ed Komski as its "Master". CII, ¶ 126. Komksi and the directors allegedly
13 created and incorporated TGSC "to hold and administer the property of the California State Grange"
14 until control of that corporation is recovered from the Individual Defendants. CII, ¶ 128. In doing so,
15 Plaintiffs-in-Intervention concede that they are not those corporations and they do not control those
16 corporations.³

17 The Complaint-in-Intervention alleges five specific causes of action against all five individual
18 defendants and none against California State Grange.

19 The First Cause of Action is for Declaratory Relief. CII, p. 1. The declarations which
20 Plaintiffs-in-Intervention seek which relate to the moving Individual Defendants include:

- 21 • that Defendants Luvaas and Parr ceased to members of the Executive Committee of the
- 22 California State Grange "upon their voluntary withdrawal from The Grange";
- 23 • that Defendants Bergeron, Yogi, and Thomas were not properly elected to the
- 24 Executive Committee of the California State Grange;
- 25 • that Defendants ceased to be members of the California State Grange;

26
27 ³ The right to use the name "California State Grange" is the subject of two actions pending in United States District
28 Court, Eastern District of California. In the first action, National Grange has sued California State Grange, a California
Corporation over the use of the name "Grange". In the second action, California State Grange has sued TGSC due to
TGSC's identification of itself by the name "California State Grange."

- 1 • that Plaintiff-in-Intervention Komski is the Master of the California State Grange;
- 2 • that the board of directors recognized by National Grange are the true directors of the
- 3 California State Grange;
- 4 • that all property of the California State Grange “is held and may be used only subject
- 5 to the Digest of Laws and for the mission and general purposes of The Grange.”

6 CII, pp. 26-27.

7 The Second Cause of Action is for Breach of Fiduciary Duty. CII, p. 23. Plaintiffs-in-
8 Intervention allege that Defendants breached their duties as members of the Executive Committee “to
9 conform to the rules set forth in the Digest of Laws and ensure that the California State Grange’s
10 property is used for the mission and general purposes of the Grange, and not diverted for some other
11 purpose.” CII, ¶ 135. They allege that the Individual Defendants breached their fiduciary duty by
12 attempting to “divert” the California State Grange’s property “for the use and benefit of an
13 organization that is not a constituent part of The Grange.” CII, ¶ 137. The Complaint-in-Intervention
14 alleges that the California State Grange was harmed as a result. CII, ¶ 138.

15 The Third Cause of Action is for Accounting. CII, p. 25. The Complaint-in-Intervention
16 alleges that as a result of the Individual Defendants’ breaches of their fiduciary duties, an accounting
17 of the California State Grange’s property is necessary to determine the amount that Plaintiffs-in-
18 Intervention are entitled to recover. CII, ¶ 142-143.

19 The Fourth Cause of Action is for Conversion. CII, p. 25. Plaintiffs-in-Intervention allege that
20 the Individual Defendants converted and refuse to return the property of “The California State
21 Grange.” CII, ¶ 146-147.

22 The Fifth Cause of Action is for Ejectment. CII, p. 26. Plaintiffs-in-Intervention allege that
23 they are entitled to possess the real property of the California State Grange. CII, ¶ 150.

24 The Complaint-in-Intervention does not allege any facts set forth in Corporations Code section
25 7710(b)(2):

26 ... plaintiff’s efforts to secure from the board such action as plaintiff
27 desires, or the reasons for not making such effort, and alleges further that plaintiff
28 has either informed the corporation or the board in writing of the ultimate facts of
each cause of action against each defendant or delivered to the corporation or the
board a true copy of the complaint which plaintiff proposes to file.

1 California State Grange asserted in its Answer to the Complaint-in-Intervention ("Answer")
2 several affirmative defenses. The First Affirmative Defense is that the Complaint-in-Intervention fails
3 to state facts sufficient to constitute a cause of action. Answer, p. 2. The Second Affirmative Defense
4 is that Plaintiffs-in-Intervention are not real parties in interest and lack standing to assert the claims
5 made against Defendants. Answer, p. 2.

6 **IV. STANDARD FOR SUMMARY JUDGMENT**

7 Summary judgment must be granted if all evidence submitted demonstrates there is no
8 triable issue as to any material fact and the moving party is entitled to judgment as a matter of law.
9 Cal. Code of Civ. Proc. § 437(c). A cause of action has no merit if either of the following exists:
10 (1) one or more of the elements of the cause of action cannot be separately established, even if that
11 element is separately pled; (2) a defendant establishes an affirmative defense to the cause of action.
12 See Cal. Code of Civ. Proc. § 437(c); *Green v. Ralee Engineering Co.* (1998) 19 Cal.4th 66, 72.

13 To overcome this Motion, Plaintiff-in-Intervention must submit evidence in admissible
14 form which demonstrates the existence of a triable issue of material fact. *Crouse v. Brobeck,*
15 *Phleger & Harrison* (1998) 67 Cal.App.4th 1509, 1524; see also Cal. Code Civ. Proc. §
16 437(c)(2). "[O]pposing affidavits or declarations shall be made by any person on personal
17 knowledge, shall set forth admissible evidence, and shall show affirmatively that the affiant is
18 competent to testify to the matters stated in the affidavits or declarations." Code of Civ. Proc. §
19 437(c)(d).

20 Plaintiff-in-Intervention cannot satisfy this legal burden as to the causes of action alleged
21 against the Individual Defendants.

22 **V. LEGAL ARGUMENT**

23 **A. All Five Causes of Action are Barred by the Second Affirmative Defense of Lack**
24 **of Standing**

25 All five causes of action are barred as a matter of law by the Individual Defendants' Second
26 Affirmative Defense, that Plaintiffs-in-Intervention are not real parties in interest and lack standing to
27 assert the claims made against the Individual Defendants. First, Plaintiff-in-Intervention "The
28 California State Grange" is not a real party in interest, because the real California State Grange is

1 already a Defendant in this action and did not file claims against the Individual Defendants. Second,
2 Ed Komski is merely an officer of a separate California corporation (TGSC) that happens to claim an
3 affiliation with the National Grange. He has no standing as an individual to bring claims which
4 vindicate rights of "The California State Grange."

5 i. **Plaintiff-in-Intervention "The California State Grange" is an Imposter and**
6 **Not a Real Party in Interest**

7 "Every action must be prosecuted in the name of the real party in interest, except as otherwise
8 provided by statute." Code Civ. Proc. § 367. The real party in interest is the person "who has the
9 right to sue under the substantive law." 4 Witkin, Cal. Proc. 5th (2008) Plead, § 121, p. 187. In
10 other words, he or she is the "owner of the cause of action." *Windham at Carmel Mountain Ranch*
11 *Assn. v. Superior Court* (2003) 109 Cal.App.4th 1162, 1173.

12 A Plaintiff may only assume a pseudonym in court proceedings "in special circumstances
13 when the party's need for anonymity outweighs prejudice to the opposing party and the public's
14 interest in knowing the party's identity." *Does I thru XXIII v. Advanced Textile Corp.* (9th Cir.
15 2000) 214 F.3d 1058, 1068; *recognized by Doe v. Lincoln Unified School Dist.* (2010) 188
16 Cal.App.4th 758, 767; *see also* Code Civ. Proc. § 422.40 ("In the complaint, the title of the action
17 shall include the names of all the parties..."). Otherwise, use of a fictitious name violates the
18 public's right of access to judicial proceedings under the First Amendment. *See Does I thru XXIII*,
19 214 F.3d at 1067 (*citing Nixon v. Warner Communications, Inc.* (1978) 435 U.S. 589, 598).

20 Plaintiffs-in-Intervention have brought this action in the name of, and purportedly on behalf of
21 "The California State Grange, a California nonprofit corporation." CII, ¶ 1. However, there is only
22 one legal entity by that name: *Defendant* California State Grange, a California non-profit mutual
23 benefit corporation, entity no. C0210454. That entity has never authorized the filing of the Complaint-
24 in-Intervention or the prosecution of the First through Fifth Causes of Action against the Individual
25 Defendants. Plaintiffs-in-Intervention have no authority or right to prosecute these claims on behalf of
26 the true California State Grange corporation. Whoever filed the Complaint-in-Intervention by the
27 name "The California State Grange" (undoubtedly TGSC) is therefore not the real party in interest and
28 cannot pursue the five causes of action against the Individual Defendants.

1 Since the California State Grange, a non-profit mutual benefit corporation, has not authorized
2 any action against the Individual Defendants to be brought in its name, this court should grant a
3 judgment of dismissal as to all five causes of action purportedly brought by Plaintiff-in-Intervention
4 "The California State Grange." That alleged party has no standing and its claims are barred by the
5 Individual Defendants' Second Affirmative Defense.

6 **ii. Ed Komski is not a Real Party in Interest and Has No Standing.**

7 Ed Komski also lacks standing to bring any of the five causes of action against the Individual
8 Defendants. He is not the "owner" of any of the causes of action and has no right to sue under the
9 substantive law. *See Windham*, 109 Cal.App.4th at 1173; 4 Witkin, Cal. Proc. 5th (2008) Plead, §
10 121, p. 187. Komski merely claims to be an officer and member of a newly chartered Grange
11 organization in California. The claims against the Individual Defendants, if any, belong to California
12 State Grange, because they implicate the purported rights of, and harm to, California State Grange --
13 not any individuals with whom it may or may not be affiliated. In the First Cause of Action for
14 Declaratory Relief, Komski seeks declarations related to California State Grange's property rights and
15 leadership. In the Second Cause for Breach of Fiduciary Duty, Komski seeks to rectify harm allegedly
16 caused to California State Grange by its directors. In the Third Cause of Action, Komski seeks an
17 accounting of the property that California State Grange is allegedly entitled to recover. In the Fourth
18 Cause of Action, Komski seeks for California State Grange to recover possession of its property.
19 Finally, in the Fifth Cause of Action, Komski seek to eject the Individual Defendants from the real
20 property that belongs to California State Grange. Komski is not the real party in interest and has no
21 standing to bring these claims.

22 **B. All Five Causes of Action, If Derivative, Are Barred by the First Affirmative**
23 **Defense for Failure to State a Claim**

24 Plaintiffs-in-Intervention may attempt to argue that the Complaint-in-Intervention is a
25 derivative action brought by Ed Komski on behalf of the California State Grange. *See* Corp. Code
26 § 7710 (governing derivative actions on behalf of non-profit mutual benefit corporations).
27 However, the Complaint-in-Intervention is clearly barred as a derivative suit by Individual
28

1 Defendant's First Affirmative Defense for failure to state facts sufficient to constitute a cause of
2 action.

3 Corporations Code section 7710 bars suit by an individual on behalf of a non-profit mutual
4 benefit corporation unless certain pleading requirements are met. Most notably here, the
5 complaining party, must allege in the complaint with particularity:

6 ... plaintiff's efforts to secure from the board such action as plaintiff
7 desires, or the reasons for not making such effort, and alleges further that plaintiff
8 has either informed the corporation or the board in writing of the ultimate facts of
each cause of action against each defendant or delivered to the corporation or the
board a true copy of the complaint which plaintiff proposes to file.

9 Corp. Code § 7710(b)(2).

10 The Complaint-in-Intervention alleges no facts to satisfy the requirements of Corp. Code §
11 7710(b)(2). Thus, all five causes of action are barred by Individual Defendants' First Affirmative
12 Defense of failure to state facts sufficient to constitute a cause of action.

13 **C. All Five Causes of Action Fail As a Matter of California Corporations Law**

14 Even if Plaintiffs-in-Intervention had standing, the Individual Defendants are entitled to
15 summary judgment because all of causes of action in the Complaint-in-Intervention fail under
16 California law.

17 California has in place a strict statutory scheme for the creation of a non-profit mutual benefit
18 corporation (Corp. Code §§ 7110 *et seq.*), for its dissolution (Corp. Code §§ 8510 *et seq.* and 8610 *et*
19 *seq.*), and for the post-dissolution distribution of its assets (Corp. Code §§ 8710 *et seq.*).

20 Plaintiffs-in-Intervention's claims all fail because their over-arching theory, which would
21 entitle them to relief, is contrary to the California Corporations Code.

22 Plaintiffs-in-Intervention's apparent theory is that California State Grange, the California non-
23 profit mutual benefit corporation, magically ceased to exist as a corporation upon National Grange's
24 revocation of its charter in April 2013. Plaintiffs-in-Intervention believe, now that National Grange
25 has "chartered" a new organization in California (TGSC), that Plaintiffs-in-Intervention also assumed
26 the legal identity of California State Grange the corporation.

27 This theory fails under the Corporations Code. As an initial matter, under California law, a
28 non-profit mutual benefit corporation does not exist by virtue of any other entity's "charter"; it exists

1 by virtue of its incorporation with the State of California, pursuant to California law, through the filing
2 of Articles of Incorporation. Corp. Code § 7120(c) (“The corporate existence begins upon the filing of
3 the articles and continues perpetually, unless otherwise expressly provided by law or in the articles.”)

4 Plaintiffs-in-Intervention claim that, upon the revocation of California State Grange’s charter,
5 National Grange’s Digest of Laws required California State Grange to dissolve and transfer its assets
6 to National Grange. National Grange is a separate and independent corporation from California State
7 Grange. It could only have the power to enforce its own corporate documents’ provisions against
8 California State Grange *if* it had been lawfully conferred that power *by* California State Grange.
9 However, California law expressly forbids a nonprofit mutual benefit corporation from conferring that
10 power to a head organization unless authorized to do so by the nonprofit mutual benefit corporation’s
11 Articles of Incorporation. Corp. Code § 7132(a)(4). Corp. Code section 7132(a) expressly states:

12 (a) The articles of incorporation may set forth any or all of the following
13 provisions, which shall not be effective unless expressly provided in the
14 articles:

...

15 (4) In the case of a subordinate corporation instituted or created under the
16 authority of a head organization, a provision setting forth either or both of the
17 following:

18 (A) That the subordinate corporation shall dissolve whenever its charter is
19 surrendered to, taken away by, or revoked by the head organization granting it.

20 (B) That in the event of its dissolution pursuant to an article provision allowed by
21 subparagraph (A) or in the event of its dissolution for any reason, any assets of
22 the corporation...shall be distributed to the head organization.

23 Corp. Code § 7132(a) (emphasis added).

24 Assuming for the purposes of this motion only that National Grange is such a “head”
25 organization, California State Grange’s Articles of Incorporation contain no such provision. UMF 18,
26 19. Thus, National Grange’s revocation of California State Grange’s charter did not either
27 automatically cause California State Grange to dissolve, nor did it cause California State Grange to be
28 legally required to dissolve. *See* Corp. Code § 7132(a)(4)(A). Moreover, California State Grange has
no obligation to transfer its property to National Grange. *See* Corp. Code § 7132(a)(4)(B). Even if
California State Grange had amended its Articles to require its property to transfer to National Grange
upon the revocation of its charter, it would still not be required to transfer its property. Under Corp.
Code § 7132(a)(4)(B), dissolution is a condition precedent to the transfer of property to the head

1 organization. No steps have been taken by either California State Grange or anyone else to effect a
2 legal dissolution of California State Grange.

3 Thus, under the California Corporations Code, neither California State Grange's charter, nor
4 its revocation, had any effect on California State Grange's status as a legal entity, its right to operate
5 and elect its own officers and directors, or its right to own and control its own property.

6 **i. The First Cause of Action for Declaratory Judgment Fails as a Matter of**
7 **Law.**

8 Even if Plaintiffs-in-Intervention had standing, the Individual Defendants are entitled to
9 summary adjudication on the First Cause of Action for Declaratory Judgment based on the undisputed
10 material facts.

11 Each declaration of rights sought by Plaintiffs-in-Intervention requires this court to find that
12 National Grange's revocation of California State Grange's charter had the effect of automatically
13 dissolving California State Grange as a California corporation and requiring the automatic transfer of
14 its property to National Grange. However, as explained above, in order for that to have occurred, such
15 a provision was required to first be included in California State Grange's Articles of Incorporation and
16 such dissolution would have to have been effected. Corp. Code § 7132(a)(4). It is undisputed that the
17 Articles of Incorporation include no such provision. California State Grange has therefore continued
18 to exist and operate without interruption. It has continued to own its property and its corporate
19 members have continued to elect its directors and officers at their annual meetings. National Grange's
20 chartering of a new organization in California has had no effect on the status or rights of California
21 State Grange as a corporation. (Again, as to who has the right to go by the name "California State
22 Grange", that question is being litigated in two federal court actions.)

23 For this additional reason, the Individual Defendants are entitled to summary adjudication on
24 the First Cause of Action for Declaratory Relief.

25 **ii. The Second Cause of Action for Breach of Fiduciary Fails as a Matter of Law**

26 Even if there is a genuine triable issue of fact whether Plaintiffs-in-Intervention have standing,
27 the Individual Defendants are entitled to summary adjudication on the Second Cause of Action for
28 Breach of Fiduciary Duty based on the undisputed material facts.

1 The elements of a cause of action for breach of fiduciary duty are the existence of a
2 fiduciary relationship, breach of fiduciary duty, and damages. *Oasis West Realty, LLC v. Goldman*
3 (2011) 51 Cal.4th 811, 820.

4 The undisputed material facts show that the Individual Defendants have not breached any
5 fiduciary duty to the California State Grange, a non-profit mutual benefit corporation. A director of
6 a non-profit mutual benefit corporation owes duties to that corporation alone. Corp. Code § 7231.
7 The Individual Defendants' duties therefore at all times ran to California State Grange, the
8 California nonprofit mutual benefit corporation, entity number C0210454. The Individual Defendants
9 have no fiduciary duty to Plaintiffs-in-Intervention. Even if TGSC did claim to be a Plaintiff-in-
10 Intervention, there is no allegation in the CII that the Individual Defendants serve on its board (as they
11 do not) or are even members of it (as they are not).

12 Further, Plaintiffs-in-Intervention allege that the Individual Defendants breached this duty by
13 refusing to turn over California State Grange's property to National Grange after National Grange
14 revoked California State Grange's charter. First, the Individual Defendants are just that –
15 individuals. They have no power individually to do so. Moreover, since California State Grange
16 was under no legal obligation to make any such transfer, they owed no such duty.

17 As described above, a California non-profit mutual benefit corporation may only confer to a
18 head organization the power to dissolve the corporation and seize its property when such a
19 provision is included in the corporation's Articles of Incorporation. Corp. Code § 7132(a)(4).
20 Because California State Grange's Articles of Incorporation include no such provision, California
21 State Grange was not required to dissolve (nor did it dissolve) or to transfer its property to National
22 Grange. It had (and has) the right to continue operations as an independent corporation, and the
23 continuing right to own and possess its real and personal property.

24 Since California State Grange was not legally required to transfer its property to National
25 Grange, had the Individual Defendants done so, it would have been on a voluntary basis and
26 contrary to their obligations to the corporation and the will of California State Grange's members.
27 Their corporate decision as a board not to divest California State Grange of its property was, in
28

1 accordance with California law, in the best interests of the corporation, and cannot constitute a
2 breach of their fiduciary duties.

3 The Second Cause of Action therefore fails as a matter of law.

4 **iii. The Third Cause of Action for an Accounting Fails as a Matter of Law**

5 Even if there is a triable issue of fact whether Plaintiffs-in-Intervention have standing to
6 bring their claims, as a matter of law, they are not entitled to an accounting by the Individual
7 Defendants.

8 “A cause of action for an accounting requires a showing that a relationship exists between
9 the plaintiff and defendant that requires an accounting, and that some balance is due the plaintiff
10 that can only be ascertained by an accounting.” *Jolley v. Chase Home Finance, LLC* (2013) 213
11 Cal.App.4th 872, 910, as modified on denial of reh'g (Mar. 7, 2013).

12 The undisputed facts show that there is no “balance...due to plaintiff.” First, the Individual
13 Defendants are individuals. They do not owe any amount of money to Plaintiffs-in-Intervention. If
14 Plaintiffs-in-Intervention want an accounting with respect to the assets of California State Grange,
15 they could have named California State Grange as a defendant to this cause of action; they did not.
16 Second, even if the Individual Defendants could be liable for an accounting of California State
17 Grange’s assets, California State Grange owes no balance to Plaintiffs-in-Intervention. There was
18 no provision in California State Grange’s Articles of Incorporation which required it, upon the
19 revocation of its charter, to dissolve and then transfer its real and personal property to National
20 Grange . *See* Corp. Code § 7132(a)(4). Even if the Articles of Incorporation did contain such a
21 provision, California State Grange has not, in fact, dissolved. It therefore has no legal obligation to
22 turn over any assets either to National Grange or Plaintiffs-in-Intervention.

23 Because the Individual Defendants owe no amount to Plaintiffs-in-Intervention, either as
24 individuals or on behalf of California State Grange, the Third Cause of Action for Accounting fails as
25 a matter of law.

26 **iv. The Fourth Cause of Action for Conversion Fails as a Matter of Law**

27 Even if there is a triable issue of fact whether Plaintiffs-in-Intervention have standing to
28 bring their claims, their Fourth Cause of Action for Conversion fails as a matter of law.

1 The first element of a cause of action for conversion is the plaintiff's ownership or right to
2 possess personal property at the time of the conversion. *Cerra v. Blackstone* (1985) 172
3 Cal.App.3d 604, 609; *see also* CACI No. 2100. Conversion – Essential Factual Elements.
4 Plaintiffs-in-Intervention cannot establish this first element. Plaintiffs-in-Intervention allege that
5 they have the right to possess all property of California State Grange as a result of National
6 Grange's revocation of California State Grange's charter. However, under California law, they
7 have no such right. There was no provision in California State Grange's Articles of Incorporation
8 which required it, upon the revocation of its charter, to dissolve and then transfer its real and
9 personal property to National Grange. *See* Corp. Code § 7132(a)(4). Even if the Articles of
10 Incorporation did contain such a provision, the California State Grange has not, in fact, dissolved.
11 Since any right on the part of Plaintiffs-in-Intervention to take possession of California State Grange's
12 property is dependent upon and derivative of the rights of National Grange, and since National Grange
13 has no such right, Plaintiffs-in-Intervention have no right to possess California State Grange's
14 property. Their conversion claim against the Individual Defendants fails as a matter of law.

15 **v. The Fifth Cause of Action for Ejectment Fails as a Matter of Law**

16 Even if there is a triable issue of fact whether Plaintiffs-in-Intervention have standing to
17 bring their claims, their Fifth Cause of Action for Ejectment fails as a matter of law.

18 Ejectment is a cause of action to recover possession of real property. *See Craviotto v. All*
19 *Persons* (1928) 93 Cal.App. 346, 352; *Zaccaria v. Bank of America Nat. Trust and Sav. Ass'n*
20 (1958) 164 Cal.App.2d 715, 718-19. In order to prevail on the cause of action, the complaining party
21 must prove that he or she has the superior right to possession. *See Shusett, Inc. v. Home Sav. and*
22 *Loan Ass'n* (1964) 231 Cal.App.2d 146, 150; *Zaccaria*, 164 Cal.App.2d at 718-719. As a matter of
23 law, Plaintiffs-in-Intervention cannot establish that they have a superior right to possess California
24 State Grange's real property.

25 Plaintiffs-in-Intervention allege that this right arises from the purported automatic transfer
26 of California State Grange's property to National Grange that should have happened upon the
27 revocation of California State Grange's charter. However, as a matter of California law, the
28

1 revocation of California State Grange's charter had no such effect and California State Grange has
2 retained its right to possess its own real property. *See* Corp. Code § 7132(a)(4).

3 Because Plaintiffs-in-Intervention cannot establish that they have a superior right to possess
4 California State Grange's real property, their Fifth Cause of Action against the Individual
5 Defendants fails as a matter of law.

6 **D. The Second Cause of Action is Barred by the First Affirmative Defense of Failure**
7 **to State a Claim as to Defendants Bergeron, Yogi, and Thomas**

8 The Second Cause of Action for Breach of Fiduciary Duty is also barred by Defendants
9 Bergeron's, Yogi's, and Thomas' First Affirmative Defense for failure to state facts sufficient to
10 state a cause of action.

11 The elements of a cause of action for breach of fiduciary duty are the existence of a
12 fiduciary relationship, breach of fiduciary duty, and damages. *Oasis West Realty, LLC v. Goldman*
13 (2011) 51 Cal.4th 811, 820.

14 The Second Cause of Action alleges that California State Grange has been harmed as a
15 result of the Individual Defendants' breach of fiduciary duty. However, Plaintiffs-in-Intervention
16 have failed to plead the first element of a "fiduciary relationship" between Bergeron, Yogi, or
17 Thomas, on one hand, and California State Grange, on the other. *See Oasis West Realty, LLC v.*
18 *Goldman* (2011) 51 Cal.4th 811, 820. To the contrary, the Complaint-in-Intervention asserts that
19 those defendants were *never* lawful directors of the California State Grange, because they
20 purported to become directors when California State Grange's charter was suspended by National
21 Grange. Assuming for the sake of argument and for purposes of this motion only that this
22 allegation is true (which it is not), the claim against these Individual Defendants fails as a matter of
23 law. The Complaint-in-Intervention fails to state facts showing that Defendants Bergeron, Yogi,
24 and Thomas had or have a fiduciary relationship with California State Grange. In other words, any
25 duty to the corporation is premised on election to California State Grange's board. If these
26 Individual Defendants were never elected to the board as Plaintiffs-in-Intervention contend, then no
27 duty to the corporation ever arose and the claim fails.
28

1 For this additional reason, those defendants are entitled to summary adjudication on the
2 Second Cause of Action for Breach of Fiduciary Duty.

3 **VI. CONCLUSION**

4 For the reasons above, Defendants Jon Luvaas, Damian Parr, Takashi Yogi, Kathy Bergeron,
5 and Bill Thomas respectfully request that this Court grant them summary judgment on the Complaint-
6 in-Intervention or, alternatively, summary adjudication on the individual claims therein.

7 DATED: February 13, 2015

BOUTIN JONES INC.

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10 By: 

Robert D. Swanson

Daniel S. Stouder

Gabrielle D. Boutin

11 Attorneys for Defendant and Cross-complainant,
12 The California State Grange and Defendants
13 Jon Luvaas, Gerald Chernoff, Damian Parr,
14 Takashi Yogi, Kathy Bergeron, and Bill Thomas

PROOF OF SERVICE
[CCP §1013, 1013a]

CASE: The National Grange v. The California State Grange, et al
COURT/CASE NO.: Sacramento Superior Court Case No.: 34-2012-00130439

The undersigned declares:

I am employed in the County of Sacramento, State of California. I am over the age of 18 years and not a party to the within action; I am employed by Boutin Jones Inc., 555 Capitol Mall, Suite 1500, Sacramento, California 95814-4603.

On this date I served the foregoing document described as:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF JON LUVAAS', DAMIAN PARR'S, TAKASHI YOGI'S, KATHY BERGERON'S AND BILL THOMAS' MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFFS-IN-INTERVENTION, OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION

on all parties in said action by causing a true copy thereof to be

- ☐ Transmitted Via Facsimile to the fax number set forth below before 5:00 p.m. on this date
- ☐ Placed in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing mail, ☐ sent certified mail, return receipt requested
- ☐ Personally delivered by _____ to the address set forth below
- ☐ Delivered personally to the address set forth below
- ☐ Sent Via Overnight Delivery by depositing in/at the appropriate facility for said service

addressed to the person(s) on whom it is to be served, whose name(s) and address(es) are listed below:

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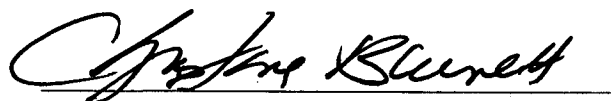
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1
2 I declare under penalty of perjury under the laws of the State of California that the foregoing
3 is true and correct.

4 EXECUTED on February 13 2015, at Sacramento, California.

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