

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SACRAMENTO  
GORDON D SCHABER COURTHOUSE**

**MINUTE ORDER**

DATE: 08/18/2015

TIME: 02:00:00 PM

DEPT: 53

JUDICIAL OFFICER PRESIDING: David Brown

CLERK: E. Brown

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: **34-2012-00130439-CU-MC-GDS** CASE INIT.DATE: 10/01/2012

CASE TITLE: **The National Grange of the Order of Patrons of Husbandry vs. The California State Grange**

CASE CATEGORY: Civil - Unlimited

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**EVENT TYPE:** Motion for Summary Judgment and/or Adjudication - Civil Law and Motion - MSA/MSJ/SLAPP

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**APPEARANCES**

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**Nature of Proceeding: Ruling on Submitted Matter (Motion for Summary Judgment and/or Adjudication(Luvaa, Parr, Yogi, Bergeron, Thomas)) taken under submission on 8/7/2015**

**TENTATIVE RULING**

Defendants Jon Luvaas, Damian Parr, Takashi Yogi, Kathy Bergeron, and Bill Thomas' (collectively, the "Individual Defendants") motion for summary judgment against Plaintiffs-in-Intervention or, in the alternative, summary adjudication is DENIED.

Individual Defendants have not complied with California Rules of Court, Rule 3.1350, subsections (a) and (d), which provide:

"If summary adjudication is sought, whether separately or as an alternative to the motion for summary judgment, the specific cause of action, affirmative defense, claims for damages, or issues of duty must be stated specifically in the notice of motion and be repeated, verbatim, in the separate statement of undisputed material facts."

"The Separate Statement of Undisputed Material Facts in support of a motion must separately identify each cause of action, claim, issue of duty, or affirmative defense, and each supporting material fact claimed to be without dispute with respect to the cause of action, claim, issue of duty, or affirmative defense."

Failure to comply with the separate statement requirement constitutes grounds for denial of the motion. (Code Civ. Proc. § 437c(b)(1).) Because Individual Defendants have not separately identified each cause of action and its supporting material facts in their separate statement, this Court treats this only as a motion for summary judgment. As a result, the Court only considers Individual Defendant's claims that all five causes of action are barred by the second affirmative defense of lack of standing and first affirmative defense of failure to state a claim.

Background

In this action, National Grange is the purported parent organization of the entity defendant the California State Grange (the "Now Unchartered State Grange") for which defendant Robert McFarland served as the Master beginning in 2012. In September 2012, McFarland and the Now Unchartered State Grange allegedly rejected National Grange's authority and National Grange suspended its Charter. The Now Unchartered State Grange continued to operate as if its Charter was valid.

National Grange revoked the Now Unchartered State Grange's Charter in April 2013 under the Bylaws of the Order of Patrons of Husbandry (the "Order"). The Now Unchartered State Grange did not appeal the revocation and instead purportedly confirmed its disaffiliation in writing. National Grange alleges that pursuant to the Bylaws, all real and personal property in the Now Unchartered State Grange's possession and control was to be delivered to National Grange to be held in trust pending reorganization and restoration of the Charter of the California State Grange to a new chartered entity.

In 2014, National Grange assisted certain Community Granges in good standing to reorganize and restore the Charter and by July 2014 the current duly authorized officers were installed in office. National Grange alleges that upon reorganization and rechartering of the California State Grange, all Grange property should revert to this new entity (the "Newly Chartered State Grange"). National Grange alleges that despite its demands, the Now Unchartered State Grange and Individual Defendants have failed to relinquish Grange property.

To assist National Grange in its suit, the Newly Chartered State Grange and Ed Komski (collectively, "Plaintiffs-in-Intervention") have filed a Complaint-in-Intervention against the Individual Defendants. Plaintiffs-in-Intervention allege five causes of action: (1) declaratory judgment; (2) breach of fiduciary duty; (3) accounting; (4) conversion; and (5) ejectment.

Individual Defendants seek summary judgment as follows:

- (1) All five causes of action are barred by the second affirmative defense of lack of standing.
- (2) All five causes of action are barred by the first affirmative defense of failure to state a claim.

#### Discussion

Summary judgment must be granted if all evidence submitted demonstrates there is no triable issue as to any material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc. § 437c(c).)

In evaluating a motion for summary judgment or summary adjudication the court engages in a three step process. The Court first identifies the issues framed by the pleadings. The pleadings define the scope of the issues on a motion for summary judgment or summary adjudication. (*FPI Dev. Inc. v. Nakashima* (1991) 231 Cal. App. 3d 367, 381-382).

Next, the Court is required to determine whether the moving party has met its burden. A party may move for summary adjudication as to one or more causes of action if that party contends the cause of action has no merit. (Code Civ. Proc. § 437c(f)(1).) A defendant has met his or her burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to that cause of action. (Code Civ. Proc. § 437c(o).)

Once the defendant has met that burden, the burden shifts to the plaintiff to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. (Code Civ. Proc. § 437c(p)(2).)

All Five Causes of Action are Not Barred by the Second Affirmative Defense of Lack of Standing

Individual Defendants contend that all five causes of action are barred because the Newly Chartered State Grange and Ed Komski are not real parties in interest and lack standing to assert the claims made. In order to completely dispose of all five causes of action, Individual Defendants must establish that neither the Newly Chartered State Grange nor Ed Komski have standing. If one or the other has standing to bring the claims, Individual Defendants would not be entitled to judgment as a matter of law. (Code Civ. Proc. § 437(c).)

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

Individual Defendants claim the Newly Chartered State Grange is assuming a false identity because it is named in this matter as "The California State Grange, a California nonprofit corporation" and the only California nonprofit corporation by that name is already a party to this action as a defendant. Individual Defendants contend the Newly Chartered State Grange is purportedly bringing this action on behalf of the Now Unchartered State Grange and they do not have the authority to prosecute those claims. Individual Defendants also claim Ed Komski is not the owner of any of the causes of action because he merely claims to be an officer and member of the Newly Chartered State Grange.

Ultimately, Individual Defendants assert the claims against them, if any, belong to the Now Unchartered State Grange, the true California State Grange Corporation.

Individual Defendants' evidence that the Now Unchartered State Grange is the only entity with standing to bring these claims includes the following: (1) the Now Unchartered State Grange has been a California corporation since 1946 (UMF 2); (2) it is the only corporation registered with the state of California with the name the California State Grange (UMF 3); (3) neither its Articles of Incorporation nor its Bylaws contain any provision that, upon revocation of its Charter by National Grange, it must dissolve or transfer its property to National Grange (UMFs 18, 19, 20); (4) in early 2014, a corporation called The Grange of the State of California's Order of Patrons of Husbandry, Chartered ("TGSC") was incorporated in California (UMF 27); and (5) the Now Unchartered State Grange has never authorized or consented to the filing in this action of the Application to Intervene, the subsequently filed Complaint-in-Intervention, or the prosecution of the Complaint-in-Intervention (UMF 31).

Even assuming Individual Defendants have met their burden, Plaintiffs-in-Intervention have established triable issues of material fact exist as to the second affirmative defense. This dispute is not over whether the Now Unchartered State Grange is a non-profit mutual benefit corporation. The crux of this defense can be boiled down to the following question: which entity is entitled to control the property held by the Now Unchartered State Grange - defendant the Now Unchartered State Grange or the Newly Chartered State Grange? Essentially, who is the true California State Grange?

Plaintiffs-in-Intervention have presented evidence that it, rather than the Now Unchartered State Grange, is the true California State Grange with rights to the property at issue. They have presented evidence that the Now Unchartered State Grange was created as a constituent part of the National Grange that agreed at its formation in 1873 to be bound by the rules of the National Grange. (AUMFs 58, 59, 60.) Plaintiffs-in-Intervention have also presented evidence that Sections 8 and 9 of the Articles of Incorporation provide that the corporation will be governed by the Constitution and Bylaws of the California State Grange, which contain numerous provisions binding the Now Unchartered State Grange to National Grange's rules, which, in turn, may recognize the Newly Chartered State Grange as the true

California State Grange.

Section 8 provides "the Constitution of the CALIFORNIA STATE GRANGE, a voluntary association, shall be and remain the Constitution of this corporation, until otherwise amended or altered in the mode provided by said instrument. (Konski Decl., Ex. 3, Ex. 7 at § 8; Pullen Decl., Ex. 1 at § 8.)

Section 9 provides "the present By-Laws of the CALIFORNIA STATE GRANGE, a voluntary association, shall constitute the By-Laws of the corporation hereby created, subject to be altered and amended as provided in the same. That any amendments made to said Constitution and By-Laws shall conform to the Constitution of the United States and of this State." (Konski Decl., Ex. 3, Ex. 7 at § 9; Pullen Decl., Ex. 1 at § 9.)

California State Grange's Constitution, in turn, provides that the organization is called "The California State Grange of the Order of Patrons of Husbandry," operates "as a chartered division of the National Grange," and may "adopt laws ... so long as they do not conflict with the laws of the National Grange." (AUMF 38 (emphasis added).) The Constitution also obligates all members and officers of the California State Grange to agree, as a condition of their membership of installation in office, "that at all times they will faithfully comply with the Constitution, By-Laws, and Codes of the Grange at all levels," including the National Grange. (AUMF 45.)

Section 14.9 of the California State Grange's By-Laws provides that "[i]t shall be the duty of the officers of the various Granges of the Order to ensure that the Constitution and By-Laws of the Grange *at all levels* are observed and obeyed." (AUMF 50 (emphasis added).)

National Grange's rules, in turn, provide that upon revocation of a State Grange's Charter, all of its assets shall be transferred to National Grange and placed in trust until a new State Grange is reorganized. (AUMF 56.)

At the May 12, 2012, meeting of the California State Grange Executive Committee in Watsonville, California, Mr. McFarland (former Master of the California State Grange) acknowledged that "the national by-laws must also be followed" with respect to Grange property. (AUMF 71.) Further, as of September 14, 2012, on the "Members Only Information" page of the Now Unchartered State Grange's website, the first link to rules under the "Bylaws" headings was to "National Digest of Laws 2012." (AUMF 72.)

National Grange suspended and later revoked the Now Unchartered State Grange's charter. (AUMFs 73, 76.) Thereafter, Individual Defendants sent a "Position Statement" to National Grange informing it that they "are no longer affiliated with National Grange." (AUMF 81.)

Pursuant to National Grange's rules, it reorganized Subordinate Granges in California and restored the California State Grange's Charter to this reorganized entity, the Newly Chartered State Grange. (AUMFs 83, 84.)

Further, Plaintiffs-in-Intervention have submitted evidence that National Grange's rules permit State Granges to form corporations as a convenience to a Grange in managing its affairs, but this does not displace any of the National Grange's rules. (AUMFs 42, 43.) In order to take out a mortgage and acquire real property in its own name, the Now Unchartered State Grange was incorporated as a non-profit corporation. (AUMFs 61, 62.)

Individual Defendants contend these additional facts are immaterial or legal conclusions. The Court disagrees. Plaintiffs-in-Intervention's additional evidence disputes Individual Defendants' evidence that neither its Articles of Incorporation nor its Bylaws contain any provision that, upon revocation of its

Charter by National Grange, the Now Unchartered State Grange must dissolve or transfer its property to National Grange. Essentially, it disputes Individual Defendants' contention that following their incorporation in 1946, they were not bound by National Grange's rules.

It creates a triable issue of material fact as to whether the Newly Chartered State Grange is the true California State Grange based on National Grange's rules and has standing to make a claim regarding the property being held by Individual Defendants. Because the Court finds that there is a dispute as to the Newly Chartered State Grange's standing, it need not address standing with respect to Mr. Komski. Accordingly, Individual Defendants' motion for summary judgment as to the Second Affirmative Defense is DENIED.

All Five Causes of Action are Not Barred by the First Affirmative Defense of Failure to State a Claim

Individual Defendants contend that Plaintiff-in-Intervention Ed Komski has failed to state facts sufficient to constitute a cause of action because Corporations Code section 7710 requires an individual bringing suit on behalf of a non-profit mutual benefit corporation to make specific allegations. Even if the Court was persuaded by this argument, it would not be sufficient to warrant summary judgment because Plaintiff-in-Intervention the Newly Chartered State Grange is not subject to Corporations Code section 7710. Accordingly, Individual Defendants motion for summary judgment as to the First Affirmative Defense is DENIED.

All Five Causes of Action are Not Barred by Corporations Code Sections 7120(c) and 7132(a)

Individual Defendants have failed to identify their final summary judgment defense in its notice of motion. However, the Court will consider this argument as it was addressed in the memorandum of points and authorities.

Individual Defendants finally contend that Plaintiffs-in-Intervention's claims fail due to Corporations Code sections 7120(c) and 7132(a). The Court disagrees.

Section 7132 went into effect January 1, 1980. In enacting the law, the California legislature expressly decided that certain provisions would only apply to pre-existing corporations if those corporations elected to make them applicable. Thus, a transition provision, section 9913 of the Corporations Code, was adopted as part of the law, which provides:

"The provisions of Sections 7130, 7131, and 7132 of the new Mutual Benefit Corporation Law relating to the contents of articles of incorporation do not apply to subject corporations governed by the Mutual Benefit Corporation Law *unless and until an amendment of the articles of incorporation is filed stating that the corporation elects to be governed by all of the provisions of the new law not otherwise applicable to it under this part.*" (emphasis added.)

It is undisputed that the Now Unchartered State Grange's articles of incorporation, which were filed in 1946, have never been amended. (UMF 19.) Accordingly, these sections are inapplicable. Even assuming the sections do apply, they do not bar Plaintiffs-in-Intervention's claims.

First, Corporations Code section 7120(c) provides "[t]he corporate existence begins upon the filing of the articles and continues perpetually, unless otherwise expressly provided by law or in the articles." Individual Defendants contend that based on this statute, the revocation of its Charter in April 2013 had no effect on its corporate existence. Plaintiffs-in-Intervention do not allege, however, that the revocation of the Charter had an effect on the legal existence of the Now Unchartered State Grange's corporation status. Plaintiffs-in-Intervention are not seeking the entity's dissolution; rather, they are seeking to recover control of the property it holds through this lawsuit.

Second, Corporations Code section 7132(a) provides:

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

...

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

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

(B) That in the event of its dissolution pursuant to an article provision allowed by subparagraph (A) or in the event of its dissolution for any reason, any assets of the corporation after compliance with the applicable provisions of Chapters 15 (commencing with Section 8510), 16 (commencing with Section 8610), and 17 (commencing with Section 8710) shall be distributed to the head organization."

Individual Defendants contends that this section expressly forbids a nonprofit mutual benefit corporation from conferring a head organization [National Grange] the power, following revocation of the corporation's charter, to dissolve the corporation and transfer its property, unless the corporation has willingly conferred those powers in its own articles of incorporation. Plaintiffs-in-Intervention do not seek dissolution, however, but only the return of Grange property in Individual Defendants' control following revocation of the Now Unchartered State Grange's Charter and disaffiliation from the Order. Accordingly, neither section 7120 nor 7132 are applicable and Individual Defendants' motion for summary judgment based on a failure to state a claim is DENIED.

Plaintiffs-in-Intervention's request for judicial notice is GRANTED. However, the Court may not take judicial notice of the truth of contents of documents or resolve factual disputes that arise from those documents. (See *Big Valley Band of Pomo Indians v Superior Court* (2005) 133 Cal. App. 4<sup>th</sup> 1185, 1191-1192; *Garcia v Sterling* (1985) 176 Cal. App. 3d 17, 22.)

Plaintiffs-in-Intervention's objections to evidence 1 and 2 are OVERRULED.

Individual Defendants' objections to evidence 1-78 are OVERRULED.

Plaintiffs-in-Intervention's counsel shall prepare for this Court's signature an order pursuant to CCP § 437c(g) and CRC Rule 3.1312.

## **COURT RULING**

The matter was argued and submitted. The matter was taken under submission.

Having taken the matter under submission on 8/7/2015, the Court now rules as follows:

## **SUBMITTED MATTER RULING**

The Tentative Ruling is affirmed, with the following modifications. The original tentative ruling is reprinted below the modifications:

On August 7, 2014, the Court heard oral arguments from all parties after the Court had issued its tentative ruling. After hearing arguments, the Court took the matter under submission. Have once again considered the arguments, the Court adopts the tentative ruling with the modifications stated below.

The Court notes that defendants Jon Luvaas, Damian Parr, Takashi Yogi, Kathy Bergeron, and Bill Thomas' (collectively, the "Individual Defendants") complied with California Rules of Court, Rule 3.1350. Accordingly, the Court will now address the Individual Defendants' additional summary adjudication issues, although they were largely addressed on the merits in the tentative ruling.

The Individual Defendants contended that each of Plaintiff-in-Intervention's five causes of action failed as a matter of law pursuant to California's Corporation Code. For each cause of action, the Individual Defendants rely on Corporations Code section 7132(a)(4) for the proposition that the Now Unchartered State Grange has no obligation to transfer its property. As discussed below, the Court has found this section inapplicable.

Further, the Individual Defendants contend the second cause of action for breach of fiduciary duty fails as a matter of law because Plaintiffs-in-Intervention cannot establish the Individual Defendants had or have a fiduciary relationship with the Newly Chartered State Grange. The Individual Defendants also argue that they, as individuals, could not have breached any duty by failing to turn over National Grange property because they are just individuals without the power to do so. The Individual Defendants do not cite to any evidence or authority for these propositions besides Corporations Code section 7231. The Court does not find the arguments persuasive.

Accordingly, the Individual Defendants' motion for summary adjudication as to each of Plaintiffs-in-Intervention's five causes of action is DENIED.

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#### Tentative Ruling

Defendants Jon Luvaas, Damian Parr, Takashi Yogi, Kathy Bergeron, and Bill Thomas' (collectively, the "Individual Defendants") motion for summary judgment against Plaintiffs-in-Intervention or, in the alternative, summary adjudication is DENIED.

Individual Defendants have not complied with California Rules of Court, Rule 3.1350, subsections (a) and (d), which provide:

"If summary adjudication is sought, whether separately or as an alternative to the motion for summary judgment, the specific cause of action, affirmative defense, claims for damages, or issues of duty must be stated specifically in the notice of motion and be repeated, verbatim, in the separate statement of undisputed material facts."

"The Separate Statement of Undisputed Material Facts in support of a motion must separately identify each cause of action, claim, issue of duty, or affirmative defense, and each supporting material fact claimed to be without dispute with respect to the cause of action, claim, issue of duty, or affirmative defense."

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#### Background

In this action, National Grange is the purported parent organization of the entity defendant the California State Grange (the "Now Unchartered State Grange") for which defendant Robert McFarland served as the Master beginning in 2012. In September 2012, McFarland and the Now Unchartered State Grange allegedly rejected National Grange's authority and National Grange suspended its Charter. The Now Unchartered State Grange continued to operate as if its Charter was valid.

National Grange revoked the Now Unchartered State Grange's Charter in April 2013 under the Bylaws of the Order of Patrons of Husbandry (the "Order"). The Now Unchartered State Grange did not appeal the revocation and instead purportedly confirmed its disaffiliation in writing. National Grange alleges that pursuant to the Bylaws, all real and personal property in the Now Unchartered State Grange's possession and control was to be delivered to National Grange to be held in trust pending reorganization and restoration of the Charter of the California State Grange to a new chartered entity.

In 2014, National Grange assisted certain Community Granges in good standing to reorganize and restore the Charter and by July 2014 the current duly authorized officers were installed in office. National Grange alleges that upon reorganization and rechartering of the California State Grange, all Grange property should revert to this new entity (the "Newly Chartered State Grange"). National Grange alleges that despite its demands, the Now Unchartered State Grange and Individual Defendants have failed to relinquish Grange property.

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#### Discussion

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Once the defendant has met that burden, the burden shifts to the plaintiff to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. (Code Civ. Proc. § 437c(p)(2).)

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the property being held by Individual Defendants. Because the Court finds that there is a dispute as to the Newly Chartered State Grange's standing, it need not address standing with respect to Mr. Komski. Accordingly, Individual Defendants' motion for summary judgment as to the Second Affirmative Defense is DENIED.

All Five Causes of Action are Not Barred by the First Affirmative Defense of Failure to State a Claim

Individual Defendants contend that Plaintiff-in-Intervention Ed Komski has failed to state facts sufficient to constitute a cause of action because Corporations Code section 7710 requires an individual bringing suit on behalf of a non-profit mutual benefit corporation to make specific allegations. Even if the Court was persuaded by this argument, it would not be sufficient to warrant summary judgment because Plaintiff-in-Intervention the Newly Chartered State Grange is not subject to Corporations Code section 7710. Accordingly, Individual Defendants motion for summary judgment as to the First Affirmative Defense is DENIED.

All Five Causes of Action are Not Barred by Corporations Code Sections 7120(c) and 7132(a)

Individual Defendants have failed to identify their final summary judgment defense in its notice of motion. However, the Court will consider this argument as it was addressed in the memorandum of points and authorities.

Individual Defendants finally contend that Plaintiffs-in-Intervention's claims fail due to Corporations Code sections 7120(c) and 7132(a). The Court disagrees.

Section 7132 went into effect January 1, 1980. In enacting the law, the California legislature expressly decided that certain provisions would only apply to pre-existing corporations if those corporations elected to make them applicable. Thus, a transition provision, section 9913 of the Corporations Code, was adopted as part of the law, which provides:

"The provisions of Sections 7130, 7131, and 7132 of the new Mutual Benefit Corporation Law relating to the contents of articles of incorporation do not apply to subject corporations governed by the Mutual Benefit Corporation Law *unless and until an amendment of the articles of incorporation is filed stating that the corporation elects to be governed by all of the provisions of the new law not otherwise applicable to it under this part.*" (emphasis added.)

It is undisputed that the Now Unchartered State Grange's articles of incorporation, which were filed in 1946, have never been amended. (UMF 19.) Accordingly, these sections are inapplicable. Even assuming the sections do apply, they do not bar Plaintiffs-in-Intervention's claims.

First, Corporations Code section 7120(c) provides "[t]he corporate existence begins upon the filing of the articles and continues perpetually, unless otherwise expressly provided by law or in the articles." Individual Defendants contend that based on this statute, the revocation of its Charter in April 2013 had no effect on its corporate existence. Plaintiffs-in-Intervention do not allege, however, that the revocation of the Charter had an effect on the legal existence of the Now Unchartered State Grange's corporation status. Plaintiffs-in-Intervention are not seeking the entity's dissolution; rather, they are seeking to recover control of the property it holds through this lawsuit.

Second, Corporations Code section 7132(a) provides:

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

...

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

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

(B) That in the event of its dissolution pursuant to an article provision allowed by subparagraph (A) or in the event of its dissolution for any reason, any assets of the corporation after compliance with the applicable provisions of Chapters 15 (commencing with Section 8510), 16 (commencing with Section 8610), and 17 (commencing with Section 8710) shall be distributed to the head organization."

Individual Defendants contends that this section expressly forbids a nonprofit mutual benefit corporation from conferring a head organization [National Grange] the power, following revocation of the corporation's charter, to dissolve the corporation and transfer its property, unless the corporation has willingly conferred those powers in its own articles of incorporation. Plaintiffs-in-Intervention do not seek dissolution, however, but only the return of Grange property in Individual Defendants' control following revocation of the Now Unchartered State Grange's Charter and disaffiliation from the Order. Accordingly, neither section 7120 nor 7132 are applicable and Individual Defendants' motion for summary judgment based on a failure to state a claim is DENIED.

Plaintiffs-in-Intervention's request for judicial notice is GRANTED. However, the Court may not take judicial notice of the truth of contents of documents or resolve factual disputes that arise from those documents. (See *Big Valley Band of Pomo Indians v Superior Court* (2005) 133 Cal. App. 4<sup>th</sup> 1185, 1191-1192; *Garcia v Sterling* (1985) 176 Cal. App. 3d 17, 22.)

Plaintiffs-in-Intervention's objections to evidence 1 and 2 are OVERRULED.

Individual Defendants' objections to evidence 1-78 are OVERRULED.

Plaintiffs-in-Intervention's counsel shall prepare for this Court's signature an order pursuant to CCP § 437c(g) and CRC Rule 3.1312.

### **Declaration of Mailing**

I hereby certify that I am not a party to the within action and that I deposited a copy of this document in sealed envelopes with first class postage prepaid, addressed to each party or the attorney of record in the U.S. Mail at 720 Ninth Street, Sacramento, California.

Dated: August 18, 2015

E. Brown, Deputy Clerk \_\_\_\_\_ s/ E. Brown \_\_\_\_\_

JEFFREY SKINNER  
SCHIFF HARDIN LLP  
901 K STREET, SUITE 700  
WASHINGTON, D.C. 20001

DANIEL S STOUDE  
ROBERT SWANSON  
BOUTIN JONES, INC  
555 CAPITOL MALL, SUITE 1500  
SACRAMENTO, CA 95814