

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

**MINUTE ORDER**    [X] Amended on 08/18/2015

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 (The National Grange) taken under submission on 8/7/2015**

**TENTATIVE RULING**

Plaintiff the National Grange of the Order of Patrons of Husbandry's ("National Grange") motion for summary judgment or, in the alternative, summary adjudication in favor of the Second Amended Complaint ("SAC") is GRANTED.

National Grange has 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 National Grange has not separately identified each cause of action and its supporting material facts in its separate statement, this Court treats this only as a motion for summary judgment. Nonetheless, the Court grants National Grange's motion for summary judgment as National Grange has met its burden on summary judgment and Defendants have not created a triable issue of material fact.

Procedural History

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The procedural history related to this motion is chaotic. National Grange filed this motion on the SAC on February 13, 2015, with a hearing date set for April 30, 2015. At that time, the SAC had not yet been filed or served (nor had this Court granted leave to file a SAC). On February 19, 2015, this court granted National Grange leave to file a SAC. National Grange filed the SAC on February 26, 2015. Defendants filed a demurrer to the third cause of action of the SAC, which was originally set to be heard on April 30 - the same day as the hearing on this motion. On April 30, 2015, this court sustained Defendants' demurrer with leave to amend. National Grange filed the Third Amended Complaint ("TAC") on May 1, 2015. By April 24, 2015, all papers related to this motion had been filed.

Defendants contend that National Grange's motion should be denied based on this procedural history, but they do not contend that they have been prejudiced as a result of National Grange's actions. Accordingly, the court declines to deny the motion on this basis.

Although the TAC is the operative pleading, National Grange has not re-filed or re-noticed this motion. However, because the Court finds that the amendments to the third cause of action to the TAC do not substantively affect the nature of this motion as they essentially removed the few references to the subordinate Granges, the court treats the motion as if made as to the TAC.

#### Background

In this declaratory relief action, National Grange alleges that it was the parent organization of 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. National Grange alleges that 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 this new entity (the "Newly Chartered State Grange"), all Grange property should revert to the Newly Chartered State Grange. National Grange alleges that despite its demands, defendants the Now Unchartered State Grange, Robert McFarland, John Luvaas, Gerald Chernoff, and Damian Parr (collectively, "Defendants") have failed to relinquish Grange property.

In the first cause of action, National Grange seeks a declaration that because the Now Unchartered State Grange's Charter was revoked under the Bylaws of the Order, and Defendants have acknowledged their voluntary disaffiliation from the Order, they have no standing to retain the real and personal property belonging to the Grange.

In the second cause of action, National Grange seeks a declaration that by following its rechartering rules under the Bylaws of the Order, the Newly Chartered State Grange is properly recognized as the sole chartered Grange entity entitled to use and control Grange property in California.

In the third cause of action, National Grange seeks a declaration that the property should revert to possession and/or control of the Newly Chartered State Grange under the Bylaws.

#### Discussion

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). Because a motion for summary judgment or summary adjudication is limited to the issues raised by the pleadings (*Lewis v. Chevron* (2004) 119 Cal. App. 4th 690, 694), all evidence submitted in support of or in opposition to the motion must be addressed to the claims and defenses raised in the pleadings. An issue that is "within the general area of issues framed by the pleadings" is properly before the court on a summary judgment or summary adjudication motion. (*Lennar Northeast Partners v. Buice* (1996) 49 Cal. App. 4th 1576, 1582-1583.) The Court cannot consider an unpleaded issue in ruling on motion for summary judgment or adjudication. (*Roth v. Rhodes* (1994) 25 Cal. App. 4th 530, 541.) The papers filed in response to a motion for summary judgment may not create issues outside the pleadings and are not a substitute for an amendment to the pleadings. (*Tsemetzin v. Coast Federal Savings & Loan Assn.* (1997) 57 Cal. App. 4th 1334, 1342.)

Next, the Court is required to determine whether the moving party has met its burden. A plaintiff moving for summary judgment must present prima facie evidence of each element of a cause of action entitling it to summary judgment. Thus, in meeting this initial burden, a moving plaintiff need only prove each element of the cause of action, and is no longer required also to disprove any defense asserted by the defendant. (See, e.g. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal. 4th 826, 843.)

If plaintiff succeeds, the burden shifts to defendant, who must set forth specific facts showing a triable issue of material fact exists as to that cause of action. (Code Civ. Proc. § 437c(p)(1).)

Under California law, "[a]ny person ... who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property ... may ask for a declaration ... and the court may make a binding declaration of these rights or duties." (Code Civ. Proc. § 1060.)

#### Standing

Defendants contend that National Grange lacks standing to bring any of the three causes of action because it is not the real party in interest. Defendants brought the same argument in their demurrer to the SAC. As addressed in this court's minute order on Defendants' demurrer to the SAC, the Court disagrees.

First Cause of Action

In the first cause of action, National Grange seeks a declaration that because the Now Unchartered State Grange's Charter was revoked under the Bylaws of the Order, and Defendants have acknowledged their voluntary disaffiliation from the Order, they have no standing to retain the real and personal property belonging to the Grange.

National Grange's evidence includes the following:

- (1) The Grange is a multi-tiered structure and representative form of government that is prescribed by the National Grange's Digest of Laws. (UMF 2.)
- (2) At the highest level, the National Grange is a delegate body that meets annually and is principally comprised of the "Masters" (i.e., the highest officer) of the subordinate units in the next level of the Grange's hierarchy, the State Granges. (UMF 3.)
- (3) A State Grange is a delegate body subordinate to the National Grange that meets annually, and is principally composed of the Masters of the constituent units in the lower levels of the Grange's hierarchy, known as "Community Granges." (UMF 4.)
- (4) The California State Grange's Constitution provides "[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, including laws limiting, defining, and regulating the powers of the various Granges of the division of the State Grange, so long as they do not conflict with the laws of the National Grange." (UMF 5.)
- (5) The National Grange is "the controlling and supreme lawmaking division of the Order from which body all other Granges of the divisions of the Order shall derive their rights and powers." (UMF 6.)
- (6) It "shall have the right and power ... to adopt laws for the organization, administration and regulation of the affairs for the various Granges of the divisions of the Order including laws limiting, defining, and regulating the powers of the various Granges of the divisions of the Order." (UMF 7.)
- (7) All provisions in the National Grange's Digest of Laws are binding upon all constituent units and individual members of the Grange, including the California State Grange. (UMF 9.)
- (8) Each State Grange, including the California State Grange, adopts and from time to time amends its own Constitution and Bylaws, which may not conflict with the Digest of Laws. (UMFs 10, 11.)
- (9) The National Grange has the authority to suspend or revoke the Charters of the State Granges whenever a "State Grange is working in violation of the law and usages of the Order, ... if it is the determination of the Master of the National Grange that the good of the order requires such action." (UMFs 12, 13.)
- (10) A State Grange may appeal any decision suspending or revoking its charter. (UMF 14.)
- (11) Section 1.10.1 of the National Grange's Digest of Laws provides that when a State Grange "has its Charter revoked, the real and personal property of said Grange shall be retained by the Order for use in accordance with the general purposes of the Order." (UMF 19.)
- (12) Section 1.11.4 of the National Grange's Digest of Laws provides that when a State Grange "is dissolved or ceases to function for any reason, the net assets of that Grange shall be retained by the Order for use in accordance with the general purposes of the Order." (UMF 20.)
- (13) The National Grange's Digest of Laws also sets forth the procedure by which property is to be transferred from a State Grange following revocation of its charter. (UMFs 21, 22.)
- (14) Between 1873 and 2012, the Now Unchartered State Grange participated as a subordinate and constituent part of the Grange, among other ways, by the following:
  - a. Regularly sending representatives to participate in annual meetings of the National Grange, through which the Now Unchartered State Grange participated in the adoption of all amendments to the National Grange's Digest of Laws that have occurred since the Now Unchartered State Grange was founded;
  - b. Regularly submitting annual and quarterly reports to the National Grange, as required by the National Grange's Digest of Laws and the California State Grange's By-Laws;
  - c. Making annual payments to the National Grange, as required by the National Grange's Digest of

Laws;

d. Taking part in programs sponsored by the National Grange, such as the Youth Fair; and  
e. Enjoying representation in lobbying activities conducted by the National Grange in Washington, D.C.

(UMF 23.)

(15) National Grange suspended the Now Unchartered State Grange's charter pursuant to Section 4.5.7 of the Digest of Laws on September 17, 2012, and the order was not appealed. (UMFs 25, 26.)

(16) On or about April 5, 2013, the Master of the National Grange revoked the Charter of the Now Unchartered State Grange pursuant to section 4.5.11 of the Digest of Laws, which provides that "[t]he remedy of revocation of a [State Grange] is intended to be used when, in the judgment of the [National Master], the deficiencies in the criteria are incapable of being remedied or may not be remedied within a reasonable time." (UMF 28.)

(17) Upon revocation of its Charter, pursuant to Digest of Laws Section 4.12.2, all property of the Now Unchartered State Grange became property of the National Grange to hold in trust until such time as a new California State Grange was reorganized and its Charter was restored. (UMF 29.)

(18) On November 8, 2013, Defendants sent a "Position Statement" to the Executive Committee of the National Grange stating that "by unanimous vote of the delegates at" the unauthorized October 2013 annual meeting, "the California State Grange amended our By-Laws to acknowledge that we are no longer affiliated with the National Grange." (UMF 33.)

(19) Defendants continue to retain control of Grange property. (UMF 34.)

The Now Unchartered State Grange contends that because its Articles of Incorporation and Bylaws do not incorporate by reference the National Grange's Digest of Laws, it is not subject to them. (Pullen Decl., ¶ 4, Ex. S (Tab 3 to Appendix); Keel Decl., ¶¶ 4-5, Exs. B-C (Tab 1 to Appendix).) It also contends that neither its Articles of Incorporation or Bylaws contain any provision that upon revocation of its charter, it must dissolve or transfer its property to National Grange. (Pullen Decl., ¶¶ 4, 7, Exs. S, V (Tab 3 to Appendix); Keel Decl., ¶¶ 4-5, Exs. B-C (Tab 1 to Appendix).) However, this does not create a *factual* dispute as to whether the Now Unchartered State Grange was subject to the National Grange's Digest of Laws. The Articles of Incorporation and Bylaws do not state that the Digest of Laws do not apply and, in fact, reference the "rules and regulations" of the Order and the National Grange's Bylaws in a few places.

The Now Unchartered State Grange also contends that its Constitution, which provides it may adopt laws for the organization, "so long as they do not conflict with the laws of the National Grange[,] is not a governing document with any authority. However, the Now Unchartered State Grange does not dispute the contents of the Constitution. It contends any authority the Constitution may have ever had ceased once the Now Unchartered State Grange was incorporated in 1946. National Grange asserts the Constitution is not meaningless because it occupies section 1 of the two sections of the Now Unchartered State Grange's Digest of Laws, expressly acknowledges the National Grange's authority, and requires that sales, encumbrances, or transfers conform to the National Grange's Bylaws. Even if the Constitution is not a legally required document to incorporate under California law, it has bearing to this matter as it reflects the intent and relationship of the parties and its contents have not been put in dispute.

The Now Unchartered State Grange has failed to create a triable issue of material fact, making National Grange's material facts undisputed.

The Now Unchartered State Grange then sets forth legal arguments in opposition. First, the Now Unchartered State Grange argues that because it is an *incorporated* non-profit mutual benefit corporation, it is governed by the California Corporations Code, not National Grange's rules.

Although it may be true that the Now Unchartered State Grange is subject to California's Corporation

Code because it is a non-profit mutual benefit corporation, it is also true that the Now Unchartered State Grange was created and became a part of the Order because National Grange issued it a Charter in 1873. (Komski Decl., ¶¶ 3, 29, Ex. R.) The Now Unchartered State Grange was not created in 1873 because it incorporated under California law; it was created when National Grange issued it a charter in 1873. In fact, the Now Unchartered State Grange operated and existed as part of the Order solely under its Charter only for nearly 73 years. The Now Unchartered State Grange did not incorporate until 1946. The Charter, in turn, discusses compliance with National Grange's rules and states "the State Grange hereby constituted, and their successors, shall at all times comply with the Constitution of the National Grange and with the Bylaws of the State Grange, which must be in harmony with, and in conformity to, all National Grange laws and rulings." (Komski Decl., ¶ 29, Ex. R.)

On July 15, 1873, plaintiff chartered the Now Unchartered State Grange as its affiliate state-level chapter. Further, it is undisputed that between 1873 and 2012, even after it incorporated (in 1946), the Now Unchartered State Grange participated as a subordinate and constituent part of the National Grange and Order. (UMF 23.) Between 1873 and 2012, the Now Unchartered State Grange regularly sent representatives to participate in annual meetings of the National Grange and participated in the adoption of all amendments to the National Grange's Digest of Laws that have occurred since the Now Unchartered State Grange was founded. (UMF 23.) It regularly submitted reports and made annual payments to the National Grange as required by the National Grange's Digest of Laws. (UMF 23.) It also enjoyed the benefits of being a part of the Order. (UMF 23.) Defendants do not dispute this fact.

Although the Now Uncharted State Grange contends National Grange's Digest of Laws does not govern them, the Now Unchartered State Grange admits, and it is undisputed, that they voted against revisions to such laws, including the provision that gave National Grange broader discretion to revoke State Grange charters. (AUMFs 47-49.) It would appear contradictory to participate and vote on amendments to the National Grange's Digest of Laws if the Now Uncharted State Grange believed it was not bound by the laws.

Essentially, the Now Unchartered State Grange is arguing that once it incorporated, it was no longer subject to National Grange's rules. Although no California court has considered the Grange's rules, the Washington Court of Appeals summarily rejected the idea that incorporation of a Subordinate Grange permitted it to disregard the rules of the National Grange: "To the contrary, incorporation of a subordinate organization does not change its purpose or status of an extension of the supreme body. Nor does it affect the Charter and oath to obey the constitution and bylaws of the Order. Those laws still control." (*National Grange of Order of Patrons of Husbandry v. O'Sullivan Grange* (1983) 35 Wn. App. 444, 450-451; 667 P.2d 1105.)

Based on its Charter, Constitution, Articles of Incorporation, Bylaws and actions, it is apparent that the Now Unchartered State Grange, whether it was specifically adopted in its governing documents or not, was supposed to and did recognize the National Grange's Digest of Laws as governing them as a subordinate part of the Order.

Further, it is undisputed that National Grange issued a Charter to the Now Unchartered State Grange and then revoked the Charter under the Bylaws of the Order. (UMF 28.) The Now Unchartered State Grange does not create a dispute of fact through its legal arguments as it contends.

It is also undisputed that the Now Uncharted State Grange acknowledged their voluntary disaffiliation from the Order. (UMF 33.) Again, the Now Unchartered State Grange does not create a dispute of fact through its legal arguments.

Finally, for the reasons discussed above, it is undisputed that the Now Uncharted State Grange recognized and was governed by the National Grange's Digest of Laws, the supreme laws of the Order.

Accordingly, based on the undisputed language of the National Grange's Digest of laws, the revocation of the Now Unchartered State Grange's charter, and the Now Unchartered State Grange's clear disaffiliation from the Order, it has no standing to retain the real and personal property belonging to the Grange.

California Law Does Not Forbid the Relief National Grange Seeks

Even if the National Grange's Digest of Laws govern the Now Unchartered State Grange, the Now Unchartered State Grange argues that the California Corporations Code also governs and forbids the relief National Grange seeks. The Court disagrees for the reasons discussed below.

Corporations Code Sections 7120(c) and 7132(a)

First, the Now Unchartered State Grange contends that National Grange'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 and 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 State Grange's articles of incorporation, which were filed in 1946, have never been amended. (AUMFs 4, 27.) Accordingly, these sections are inapplicable.

Even assuming the sections do apply, they do not preclude the relief National Grange seeks.

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." The Unchartered State Grange contends that based on this statute, the revocation of its Charter in April 2013 had no effect on its corporate existence. National Grange does 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. Rather, National Grange seeks declaratory judgment as to whether the revocation of the Charter had an effect on the Now Unchartered State Grange's right to possess and control Grange property.

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."

The Now Unchartered State Grange 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 seize its property[.]" unless "the corporation has willingly conferred those powers in its own articles of incorporation." (Opp. 12:12-16.) National Grange contends section 7132(a) only applies to the automatic dissolution of the subordinate entity upon revocation of its charter, which has not been requested by National Grange. The Court agrees. National Grange does not seek dissolution, but only that the Now Unchartered State Grange return Grange property in their control following revocation of the Charter and disaffiliation from the

Order.

Corporations Code Section 7911

Next, the Now Unchartered State Grange contends Corporations Code section 7911 prohibits it from transferring its property unless the transfer is approved by its board and members. The Now Unchartered State Grange's superficial support for this contention is the language of the statute, which provides:

"(a) Subject to the provisions of Section 7142, a corporation may sell, lease, convey, exchange, transfer or otherwise dispose of all or substantially all of its assets when the principal terms are:

(1) Approved by the board; and

(2) Unless the transaction is in the usual and regular course of its activities, approved by the members (Section 5034), either before or after approval by the board and before or after the transaction."

However, National Grange is not seeking the disposition of all or substantially all of the Now Unchartered State Grange's property. Rather, it is seeking a declaratory judgment regarding who has the *right* to the Grange property. Accordingly, section 7911 is not applicable.

Evidence Code section 662

The Now Unchartered State Grange next contends Evidence Code section 662 prohibits the transfer of the property. The Now Unchartered State Grange's only support for this contention is the language of the statute and its contention that the only specific property mentioned by National Grange is the State Grange's headquarters building in Sacramento, California, which is owned by the Now Unchartered State Grange corporation.

Section 662 provides "[t]he owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof." Thus, the question is whether the facts presented are sufficient to rebut this presumption. The Court concludes they are.

It is undisputed that section 1.3.1 of the National Grange's Digest of Laws states "[t]he National Grange, as the national representative division of the Order, shall be the controlling and supreme law making division of the Order from which body all the other Granges of the divisions of the Order shall derive their equal rights and powers. 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 Granges of the divisions of the Order including laws limiting, defining, and regulating the powers of the various Granges of the divisions of the Order." (UMFs 6, 7.)

It is undisputed that between 1873 and 2012, the Now Unchartered State Grange participated as a subordinate and constituent part of the National Grange and Order and recognized certain National Grange rules governing them as a subordinate part of the Order. (UMF 23.)

It is undisputed that section 4.12.12 of National Grange's Bylaws provide:

"4.12.2 Property of State Granges - Whenever a State Grange surrenders its Charter or otherwise becomes Inactive, the net assets of that Grange shall be retained by the Order for use in accordance with the general purposes of the Order, subject to the following terms and conditions:

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

Subsection (B) describes the legal and beneficial interest accruing to National Grange if the inactive State Grange is not reorganized within seven years.

Accordingly, there appears to be clear and convincing evidence rebutting the presumption of Evidence Code section 662. (*Episcopal Church Cases* (2009) 45 Cal. 4<sup>th</sup> 467, 492.)

California Trust Law

The Now Unchartered State Grange also contends California trust law requires a specific grant by the trust settlor to create a trust and that National Grange has not established that the Now Unchartered State Grange ever agreed to hold its property in trust for National Grange or the Order. For the reasons discussed above, the Court disagrees.

Corporations Code section 7231

The Now Unchartered State Grange finally contends that Corporations Code section 7231, which imposes fiduciary duties on directors of non-profit mutual benefit corporations to act in the best interests of the corporation, trumps National Grange's rules. However, Defendants do not cite to any applicable case law supporting this proposition. Accordingly, the Court does not find this argument persuasive.

Conclusion

For the foregoing reasons, National Grange has demonstrated undisputed material facts warrant the declaratory relief it seeks as to the first cause of action. The Now Unchartered State Grange has failed to create a triable issue of material fact through its evidence and the Court disagrees with its legal arguments.

Second Cause of Action

In the second cause of action, National Grange seeks a declaration that by following its rechartering rules under the Bylaws of the Order, the Newly Chartered State Grange is properly recognized as the sole chartered Grange entity entitled to use and control Grange property in California.

The Now Uncharted State Grange contends this cause of action fails because "Grange property" is never defined in the motion and, regardless of the "charters" of any other entity, it is entitled to own and retain its own property under California's Corporation Code. For the reasons discussed above, the Court disagrees with these arguments.

It is undisputed that the National Grange reorganized and issued a Charter to the Newly Chartered State Grange pursuant to section 4.3.8 of the Digest of Laws. (UMFs 36 and 37.) It is also undisputed that section 4.12.2 of the Digest of Laws provides "[i]f the Inactive State Grange is reorganized within a period of seven years ... then all trust property shall revert to the reorganized Grange, and the trust shall terminate." (UMF 22.) Because it is also undisputed that the Now Uncharted State Grange's Charter was revoked and it disaffiliated from the Order (as discussed above), the Newly Chartered State Grange is the only Grange entity entitled to use and control Grange property in California pursuant to the National Grange's Digest of Laws.

Third Cause of Action

In the third cause of action, National Grange seeks a declaration that the property should revert to possession and/or control of the Newly Chartered State Grange under the Bylaws.

As discussed in detail above, based on its Charter, Constitution, Articles of Incorporation, Bylaws and actions, it is apparent that the Now Unchartered State Grange, whether it was specifically adopted in its governing documents or not, was supposed to and did recognize the National Grange's Digest of Laws as governing them as a subordinate part of the Order.

The language of section 4.12.2 of the Digest of Laws, which sets forth a two-step process to transfer Grange property when a State Grange surrenders its charter or otherwise becomes inactive, is undisputed. (UMF 22.) The Grange property is to be held in trust by the National Grange until the Inactive State Grange is reorganized. (UMF 22.)

In *Most Worshipful Sons of Light Grand Lodge, etc. v. Sons of Light Lodge No. 9*, the California Court of Appeal held that the assets of a fraternal association are the property of all the members, not of any number less than all of them. (118 Cal. App. 2d 78, 84-85 (1953).) The Now Uncharted State Grange contends this case is inapplicable because it concerned an unincorporated association and, here, the National Grange and Now Uncharted State Grange are two separate corporations and entities, each of which has the right to own separate property. However, for the reasons discussed above, the Court rejects this argument. While the Now Uncharted State Grange may be a legally separate entity from the National Grange, the undisputed facts establish that the Now Uncharted State Grange was created as a subordinate division of the Order and actively participated in the Order and recognized it was governed by the National Grange's Digest of Laws for many years.

Indeed, it is a "fundamental mistake" ... "to rely solely on California corporations law in a vacuum, without reference to the articles of incorporation and bylaws" of the subordinate corporation, as well as the constitution of the larger entity. (*Huber v. Jackson* (2009) 175 Cal. App. 4th 663, 680; *New v. Kroeger* (2008) 167 Cal. App. 4th 800, 820.) Accordingly, based on the National Grange's Digest of Laws, the Now Uncharted State Grange's Charter, Constitution, Articles of Incorporation, Bylaws, and participation in the Order, the Now Uncharted State Grange has the obligation to transfer to the Newly Chartered State Grange all Grange property in its possession or control.

#### Defendant McFarland's Arguments

In his separate opposition, Defendant McFarland sets forth many of the same arguments set forth by Defendants. His additional contentions are irrelevant as discussed below.

First, McFarland contends, based on Corporations Code sections 7213 and 7223, that National Grange lacks standing to remove him as President of the California State Grange and, therefore, precludes National Grange's request that this Court declare that he is no longer the President. McFarland's argument is not considered as National Grange has not requested declaratory relief in this form.

Second, McFarland contends his settlement of *The California State Grange v. Agricultural Association of Vista* is protected by the business judgment rule and that his suspension was improper because the California State Grange's Board of Directors found he did not violate Grange law. McFarland claims that this precludes National Grange's request that this Court declare he has been suspended as President and Director of the California State Grange. Again, National Grange has not requested declaratory relief in this form. Thus, McFarland's arguments are irrelevant.

The Now Uncharted State Grange's objections to evidence numbers 1 through 54 are OVERRULED.

Robert McFarland's objections to evidence numbers 1 through 41 are OVERRULED.

The National Grange's objections to the declarations of Rick Keel, Elizabeth Pullen, Robert D. Swanson, Damian Parr, Takashi Yogi, Kathy Bergeron, Bill Thomas, Jon Luvaas, Robert McFarland, and Larry Kroger are OVERRULED.

The National Grange's objections to the declaration of William A. Lapcevic are SUSTAINED.

Robert McFarland's request for judicial notice of the court's February 19, 2015 Minute Order, February 26, 2015 Second Amended Complaint, and March 27, 2015 Notice of Demurrer is GRANTED.

National Grange's requests for judicial notice of the Court's file in this action and the order of the United States District Court, Eastern District of California, 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.)

National Grange'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 vacated, and the Court now rules as follows.

Plaintiff the National Grange of the Order of Patrons of Husbandry's ("National Grange") motion for summary judgment or, in the alternative, summary adjudication in favor of the Second Amended Complaint ("SAC") is GRANTED.

National Grange has 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 National Grange has not separately identified each cause of action and its supporting material facts in its separate statement, this Court treats this only as a motion for summary judgment. Nonetheless, the Court grants National Grange's motion for summary judgment as National Grange has met its burden on summary judgment and Defendants have not created a triable issue of material fact.

## Procedural History

The procedural history related to this motion is chaotic. National Grange filed this motion on the SAC on

February 13, 2015, with a hearing date set for April 30, 2015. At that time, the SAC had not yet been filed or served (nor had this Court granted leave to file a SAC). On February 19, 2015, this court granted National Grange leave to file a SAC. National Grange filed the SAC on February 26, 2015. Defendants filed a demurrer to the third cause of action of the SAC, which was originally set to be heard on April 30 - the same day as the hearing on this motion. On April 30, 2015, this court sustained Defendants' demurrer with leave to amend. National Grange filed the Third Amended Complaint ("TAC") on May 1, 2015. By April 24, 2015, all papers related to this motion had been filed.

Defendants contend that National Grange's motion should be denied based on this procedural history, but they do not contend that they have been prejudiced as a result of National Grange's actions. Accordingly, the court declines to deny the motion on this basis.

Although the TAC is the operative pleading, National Grange has not re-filed or re-noticed this motion. However, because the Court finds that the amendments to the third cause of action to the TAC do not substantively affect the nature of this motion as they essentially removed the few references to the subordinate Granges, the court treats the motion as if made as to the TAC.

#### Background

In this declaratory relief action, National Grange alleges that it was the parent organization of 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. National Grange alleges that 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 acknowledged it is no longer affiliated with National Grange in writing. National Grange alleges that pursuant to the Bylaws, all real and personal property belonging to National Grange 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 this new entity (the "Newly Chartered State Grange"), all Grange property should revert to the Newly Chartered State Grange. National Grange alleges that despite its demands, defendants the Now Unchartered State Grange, Robert McFarland, John Luvaas, Gerald Chernoff, and Damian Parr (collectively, "Defendants") have failed to relinquish Grange property.

In the first cause of action, National Grange seeks a declaration that because the Now Unchartered State Grange's Charter was revoked under the Bylaws of the Order, and Defendants have acknowledged this disaffiliation from the Order, they have no standing to retain the real and personal property belonging to the Grange.

In the second cause of action, National Grange seeks a declaration that by following its rechartering rules under the Bylaws of the Order, the Newly Chartered State Grange is properly recognized as the sole chartered Grange entity entitled to use and control Grange property in California.

In the third cause of action, National Grange seeks a declaration that the property should revert to possession and/or control of the Newly Chartered State Grange under the Bylaws.

#### Discussion

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). Because a motion for summary judgment or summary adjudication is limited to the issues raised by the pleadings (*Lewis v. Chevron* (2004) 119 Cal. App. 4th 690, 694), all evidence submitted in support of or in opposition to the motion must be addressed to the claims and defenses raised in the pleadings. An issue that is "within the general area of issues framed by the pleadings" is properly before the court on a summary judgment or summary adjudication motion. (*Lennar Northeast Partners v. Buice* (1996) 49 Cal. App. 4th 1576, 1582-1583.) The Court cannot consider an unpleaded issue in ruling on motion for summary judgment or adjudication. (*Roth v. Rhodes* (1994) 25 Cal. App. 4th 530, 541.) The papers filed in response to a motion for summary judgment may not create issues outside the pleadings and are not a substitute for an amendment to the pleadings. (*Tsemetzin v. Coast Federal Savings & Loan Assn.* (1997) 57 Cal. App. 4th 1334, 1342.)

Next, the Court is required to determine whether the moving party has met its burden. A plaintiff moving for summary judgment must present prima facie evidence of each element of a cause of action entitling it to summary judgment. Thus, in meeting this initial burden, a moving plaintiff need only prove each element of the cause of action, and is no longer required also to disprove any defense asserted by the defendant. (See, e.g. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal. 4th 826, 843.)

If plaintiff succeeds, the burden shifts to defendant, who must set forth specific facts showing a triable issue of material fact exists as to that cause of action. (Code Civ. Proc. § 437c(p)(1).)

Under California law, "[a]ny person ... who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property ... may ask for a declaration ... and the court may make a binding declaration of these rights or duties." (Code Civ. Proc. § 1060.)

#### Standing

Defendants contend that National Grange lacks standing to bring any of the three causes of action because it is not the real party in interest. Defendants brought the same argument in their demurrer to the SAC. As addressed in this court's minute order on Defendants' demurrer to the SAC, the Court

disagrees.

First Cause of Action

In the first cause of action, National Grange seeks a declaration that because the Now Unchartered State Grange's Charter was revoked under the Bylaws of the Order, and Defendants have acknowledged this disaffiliation from the Order, they have no standing to retain the real and personal property belonging to the Grange.

National Grange's evidence includes the following:

- (1) The Grange is a multi-tiered structure and representative form of government that is prescribed by the National Grange's Digest of Laws. (UMF 2.)
- (2) At the highest level, the National Grange is a delegate body that meets annually and is principally comprised of the "Masters" (i.e., the highest officer) of the subordinate units in the next level of the Grange's hierarchy, the State Granges. (UMF 3.)
- (3) A State Grange is a delegate body subordinate to the National Grange that meets annually, and is principally composed of the Masters of the constituent units in the lower levels of the Grange's hierarchy, known as "Community Granges." (UMF 4.)
- (4) The California State Grange's Constitution provides "[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, including laws limiting, defining, and regulating the powers of the various Granges of the division of the State Grange, so long as they do not conflict with the laws of the National Grange." (UMF 5.)
- (5) The National Grange is "the controlling and supreme lawmaking division of the Order from which body all other Granges of the divisions of the Order shall derive their rights and powers." (UMF 6.)
- (6) It "shall have the right and power ... to adopt laws for the organization, administration and regulation of the affairs for the various Granges of the divisions of the Order including laws limiting, defining, and regulating the powers of the various Granges of the divisions of the Order." (UMF 7.)
- (7) All provisions in the National Grange's Digest of Laws are binding upon all constituent units and individual members of the Grange, including the California State Grange. (UMF 9.)
- (8) Each State Grange, including the California State Grange, adopts and from time to time amends its own Constitution and Bylaws, which may not conflict with the Digest of Laws. (UMFs 10, 11.)
- (9) The National Grange has the authority to suspend or revoke the Charters of the State Granges whenever a "State Grange is working in violation of the law and usages of the Order, ... if it is the determination of the Master of the National Grange that the good of the order requires such action." (UMFs 12, 13.)
- (10) A State Grange may appeal any decision suspending or revoking its charter. (UMF 14.)
- (11) A State Grange may not operate as a Grange while its Charter has been suspended or revoked. (UMF 15.)
- (12) Section 1.10.1 of the National Grange's Digest of Laws provides that when a State Grange "has its Charter revoked, the real and personal property of said Grange shall be retained by the Order for use in accordance with the general purposes of the Order." (UMF 19.)
- (13) Section 1.11.4 of the National Grange's Digest of Laws provides that when a State Grange "is dissolved or ceases to function for any reason, the net assets of that Grange shall be retained by the Order for use in accordance with the general purposes of the Order." (UMF 20.)
- (14) The National Grange's Digest of Laws also sets forth the procedure by which property is to be transferred from a State Grange following revocation of its charter. (UMFs 21, 22.)
- (15) Between 1873 and 2012, the Now Unchartered State Grange participated as a subordinate

and constituent part of the Grange, among other ways, by the following:

- a. Regularly sending representatives to participate in annual meetings of the National Grange, through which the Now Unchartered State Grange participated in the adoption of all amendments to the National Grange's Digest of Laws that have occurred since the Now Unchartered State Grange was founded;
- b. Regularly submitting annual and quarterly reports to the National Grange, as required by the National Grange's Digest of Laws and the California State Grange's By-Laws;
- c. Making annual payments to the National Grange, as required by the National Grange's Digest of Laws;
- d. Taking part in programs sponsored by the National Grange, such as the Youth Fair; and
- e. Enjoying representation in lobbying activities conducted by the National Grange in Washington, D.C. (UMF 23.)

(16) National Grange suspended the Now Unchartered State Grange's charter pursuant to Section 4.5.7 of the Digest of Laws on September 17, 2012, and the order was not appealed. (UMFs 25, 26.)

(17) On or about April 5, 2013, the Master of the National Grange revoked the Charter of the Now Unchartered State Grange pursuant to section 4.5.11 of the Digest of Laws, which provides that "[t]he remedy of revocation of a [State Grange] is intended to be used when, in the judgment of the [National Master], the deficiencies in the criteria are incapable of being remedied or may not be remedied within a reasonable time." (UMF 28.)

(18) Upon revocation of its Charter, pursuant to Digest of Laws Section 4.12.2, all property of the Now Unchartered State Grange became property of the National Grange to hold in trust until such time as a new California State Grange was reorganized and its Charter was restored. (UMF 29.)

(19) On November 8, 2013, Defendants sent a "Position Statement" to the Executive Committee of the National Grange stating that "by unanimous vote of the delegates at" the unauthorized October 2013 annual meeting, "the California State Grange amended our By-Laws to acknowledge that we are no longer affiliated with the National Grange." (UMF 33.)

(20) Defendants continue to retain control of Grange property. (UMF 34.)

The Now Unchartered State Grange contends that because its Articles of Incorporation and Bylaws do not incorporate by reference the National Grange's Digest of Laws, it is not subject to them. (Pullen Decl., ¶ 4, Ex. S (Tab 3 to Appendix); Keel Decl., ¶¶ 4-5, Exs. B-C (Tab 1 to Appendix).) It also contends that neither its Articles of Incorporation nor its Bylaws contain any provision that upon revocation of its charter, it must dissolve or transfer its property to National Grange. (Pullen Decl., ¶¶ 4, 7, Exs. S, V (Tab 3 to Appendix); Keel Decl., ¶¶ 4-5, Exs. B-C (Tab 1 to Appendix).) However, this does not create a *factual* dispute as to whether the Now Unchartered State Grange was subject to the National Grange's Digest of Laws. The Articles of Incorporation and Bylaws do not state that the Digest of Laws do not apply and, in fact, reference the "rules and regulations" of the Order and the National Grange's Bylaws in a few places.

The Now Unchartered State Grange also contends that its Constitution, which provides it may adopt laws for the organization, "so long as they do not conflict with the laws of the National Grange[,]" is not a governing document with any authority. However, the Now Unchartered State Grange does not dispute the contents of the Constitution. It contends any authority the Constitution may have ever had ceased once the Now Unchartered State Grange was incorporated in 1946. National Grange asserts the Constitution is not meaningless because it occupies section 1 of the two sections of the Now Unchartered State Grange's Digest of Laws, expressly acknowledges the National Grange's authority, and requires that sales, encumbrances, or transfers conform to the National Grange's Bylaws. Even if the Constitution is not a legally required document to incorporate under California law, it has bearing to this matter as it reflects the intent and relationship of the parties and its contents have not been put in dispute.

The Now Unchartered State Grange has failed to create a triable issue of material fact, making National

Grange's material facts undisputed.

The Now Unchartered State Grange then sets forth legal arguments in opposition. First, the Now Unchartered State Grange argues that because it is an *incorporated* non-profit mutual benefit corporation, it is governed by the California Corporations Code, not National Grange's rules.

Although it may be true that the Now Unchartered State Grange is subject to California's Corporation Code because it is a non-profit mutual benefit corporation, it is also true that the Now Unchartered State Grange was created and became a part of the Order because National Grange issued it a Charter in 1873. (Komski Decl., ¶¶ 3, 29, Ex. R.) The Now Unchartered State Grange was not created in 1873 because it incorporated under California law; it was created when National Grange issued it a charter in 1873. In fact, the Now Unchartered State Grange operated and existed as part of the Order solely under its Charter for nearly 73 years. The Now Unchartered State Grange did not incorporate until 1946. The Charter, in turn, discusses compliance with National Grange's rules and states "the State Grange hereby constituted, and their successors, shall at all times comply with the Constitution of the National Grange and with the Bylaws of the State Grange, which must be in harmony with, and in conformity to, all National Grange laws and rulings." (Komski Decl., ¶ 29, Ex. R.)

On July 15, 1873, National Grange chartered the Now Unchartered State Grange as its affiliate state-level chapter. Further, it is undisputed that between 1873 and 2012, even after it incorporated (in 1946), the Now Unchartered State Grange participated as a subordinate and constituent part of the National Grange and Order. (UMF 23.) Between 1873 and 2012, the Now Unchartered State Grange regularly sent representatives to participate in annual meetings of the National Grange and participated in the adoption of all amendments to the National Grange's Digest of Laws that have occurred since the Now Unchartered State Grange was founded. (UMF 23.) It regularly submitted reports and made annual payments to the National Grange as required by the National Grange's Digest of Laws. (UMF 23.) It also enjoyed the benefits of being a part of the Order. (UMF 23.) Defendants do not dispute this fact.

Although the Now Uncharted State Grange contends National Grange's Digest of Laws does not govern them, the Now Unchartered State Grange admits, and it is undisputed, that they voted against revisions to such laws, including the provision that gave National Grange broader discretion to revoke State Grange charters. (AUMFs 47-49.) It would appear contradictory to participate and vote on amendments to the National Grange's Digest of Laws if the Now Uncharted State Grange believed it was not bound by the laws.

Essentially, the Now Unchartered State Grange is arguing that once it incorporated, it was no longer subject to National Grange's rules. Although no California court has considered the Grange's rules, the Washington Court of Appeals summarily rejected the idea that incorporation of a Subordinate Grange permitted it to disregard the rules of the National Grange: "To the contrary, incorporation of a subordinate organization does not change its purpose or status of an extension of the supreme body. Nor does it affect the Charter and oath to obey the constitution and bylaws of the Order. Those laws still control." (*National Grange of Order of Patrons of Husbandry v. O'Sullivan Grange* (1983) 35 Wn. App. 444, 450-451; 667 P.2d 1105.)

Based on its Charter, Constitution, Articles of Incorporation, Bylaws and actions for approximately 140 years, it is apparent that the Now Unchartered State Grange, whether it was specifically adopted in its incorporation documents or not, was supposed to and did recognize the National Grange's Digest of Laws as governing them as a subordinate part of the Order.

Further, it is undisputed that National Grange issued a Charter to the Now Unchartered State Grange

and then revoked the Charter under the Bylaws of the Order. (UMF 28.) It is undisputed that when a State Grange has its Charter revoked or suspended, it may not operate as a Grange. (UMF 15.) Essentially, it becomes inactive as a Grange of the Order. The Now Unchartered State Grange does not create a dispute of fact through its legal arguments as it contends.

It is also undisputed that the Now Uncharted State Grange acknowledged that it is "no longer affiliated with" the Order. (UMF 33.) Again, the Now Unchartered State Grange does not create a dispute of fact through its legal arguments.

Finally, for the reasons discussed above, it is undisputed that the Now Uncharted State Grange recognized and was governed by the National Grange's Digest of Laws, the supreme laws of the Order. Accordingly, based on the undisputed language of the National Grange's Digest of laws, the revocation of the Now Unchartered State Grange's charter, the subsequent inability of the Now Unchartered State Grange to operate as a Grange, and the Now Uncharted State Grange's acknowledgment that it is no longer affiliated with the Order, it has no standing to retain any real and personal property belonging to the Grange.

#### California Law Does Not Forbid the Relief National Grange Seeks

Even if the National Grange's Digest of Laws govern the Now Uncharted State Grange, the Now Unchartered State Grange argues that the California Corporations Code also governs and forbids the relief National Grange seeks. The Court disagrees for the reasons discussed below.

#### Corporations Code Sections 7120(c) and 7132(a)

First, the Now Unchartered State Grange contends that National Grange'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 and 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 State Grange's articles of incorporation, which were filed in 1946, have never been amended. (AUMFs 4, 27.) Accordingly, these sections are inapplicable.

Even assuming the sections do apply, they do not preclude the relief National Grange seeks.

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." The Now Unchartered State Grange contends that based on this statute, the revocation of its Charter in April 2013 had no effect on its corporate existence. National Grange does 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. Rather, National Grange seeks declaratory judgment as to whether the revocation of the Charter had an effect on the Now Unchartered State Grange's right to possess and control Grange property.

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."

The Now Unchartered State Grange 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 seize its property[.]" unless "the corporation has willingly conferred those powers in its own articles of incorporation." (Opp. 12:12-16.) National Grange contends section 7132(a) only applies to the automatic dissolution of the subordinate entity upon revocation of its charter, which has not been requested by National Grange. The Court agrees. National Grange does not seek dissolution, but only that the Now Unchartered State Grange return Grange property in their control following revocation of the Charter, resulting inactivity, and disaffiliation from the Order.

#### Corporations Code Section 7911

Next, the Now Unchartered State Grange contends Corporations Code section 7911 prohibits it from transferring its property unless the transfer is approved by its board and members. The Now Unchartered State Grange's superficial support for this contention is the language of the statute, which provides:

"(a) Subject to the provisions of Section 7142, a corporation may sell, lease, convey, exchange, transfer or otherwise dispose of all or substantially all of its assets when the principal terms are:

(1) Approved by the board; and

(2) Unless the transaction is in the usual and regular course of its activities, approved by the members (Section 5034), either before or after approval by the board and before or after the transaction."

However, National Grange is not seeking the disposition of all or substantially all of the Now Unchartered State Grange's property. Rather, it is seeking a declaratory judgment regarding who has the *right* to the Grange property in the Now Unchartered State Grange's possession and control. Accordingly, section 7911 is not applicable.

#### Evidence Code section 662

The Now Unchartered State Grange next contends Evidence Code section 662 prohibits the transfer of the property. The Now Unchartered State Grange's only support for this contention is the language of the statute and its contention that the only specific property mentioned by National Grange is the State Grange's headquarters building in Sacramento, California, which is owned by the Now Unchartered State Grange corporation.

Section 662 provides "[t]he owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof." Thus, the question is whether the facts presented are sufficient to rebut this presumption. The Court concludes they are.

It is undisputed that section 1.3.1 of the National Grange's Digest of Laws states "[t]he National Grange, as the national representative division of the Order, shall be the controlling and supreme law making division of the Order from which body all the other Granges of the divisions of the Order shall derive their equal rights and powers. 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 Granges of the divisions of the Order including laws limiting, defining, and regulating the powers of the various Granges of the divisions of the Order." (UMFs 6, 7.)

It is undisputed that between 1873 and 2012, the Now Unchartered State Grange participated as a subordinate and constituent part of the National Grange and Order and recognized certain National Grange rules governing them as a subordinate part of the Order. (UMF 23.)

It is undisputed that section 4.12.12 of National Grange's Bylaws provide:

"4.12.12 Property of State Granges - Whenever a State Grange surrenders its Charter or otherwise becomes Inactive, the net assets of that Grange shall be retained by the Order for use in accordance with the general purposes of the Order, subject to the following terms and conditions:

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

Subsection (B) describes the legal and beneficial interest accruing to National Grange if the inactive State Grange is not reorganized within seven years.

Accordingly, the undisputed evidences appears to rebut the presumption of Evidence Code section 662. (*Episcopal Church Cases* (2009) 45 Cal. 4<sup>th</sup> 467, 492.)

#### California Trust Law

The Now Unchartered State Grange also contends California trust law requires a specific grant by the trust settlor to create a trust and that National Grange has not established that the Now Unchartered State Grange ever agreed to hold its property in trust for National Grange or the Order. For the reasons discussed above, the Court does not find this argument persuasive.

#### Corporations Code section 7231

The Now Unchartered State Grange finally contends that Corporations Code section 7231, which imposes fiduciary duties on directors of non-profit mutual benefit corporations to act in the best interests of the corporation, trumps National Grange's rules. However, Defendants do not cite to any applicable case law supporting this proposition. Accordingly, the Court does not find this argument persuasive.

#### Conclusion

For the foregoing reasons, National Grange has demonstrated undisputed material facts warrant the declaratory relief it seeks as to the first cause of action. The Now Unchartered State Grange has failed to create a triable issue of material fact through its evidence and the Court disagrees with its legal arguments.

#### Second Cause of Action

In the second cause of action, National Grange seeks a declaration that by following its rechartering rules under the Bylaws of the Order, the Newly Chartered State Grange is properly recognized as the sole chartered Grange entity entitled to use and control Grange property in California.

The Now Uncharted State Grange contends this cause of action fails because "Grange property" is never defined in the motion and, regardless of the "charters" of any other entity, it is entitled to own and retain its *own* property under California's Corporation Code. For the reasons discussed above, and because the relief National Grange seeks is not to prohibit the Now Unchartered State Grange from retaining its *own* property, the Court disagrees with these arguments.

It is undisputed that the National Grange reorganized and issued a Charter to the Newly Chartered State Grange pursuant to section 4.3.8 of the Digest of Laws. (UMFs 36 and 37.) It is also undisputed that section 4.12.2 of the Digest of Laws provides "[i]f the Inactive State Grange is reorganized within a period of seven years ... then all trust property shall revert to the reorganized Grange, and the trust shall terminate." (UMF 22.) Because it is also undisputed that the Now Uncharted State Grange's Charter was revoked, it therefore could not operate as a Grange, and it acknowledged it was no longer affiliated with the Order (as discussed above), the Newly Chartered State Grange is the only Grange entity entitled to use and control Grange property in California pursuant to the National Grange's Digest of Laws.

#### Third Cause of Action

In the third cause of action, National Grange seeks a declaration that the property should revert to possession and/or control of the Newly Chartered State Grange under the Bylaws.

As discussed in detail above, based on its Charter, Constitution, Articles of Incorporation, Bylaws and actions, it is apparent that the Now Uncharted State Grange, whether it was specifically adopted in its incorporating documents or not, was supposed to and did recognize the National Grange's Digest of Laws as governing them as a subordinate part of the Order.

The language of section 4.12.2 of the Digest of Laws, which sets forth a two-step process to transfer Grange property when a State Grange surrenders its charter or otherwise becomes inactive, is undisputed. (UMF 22.) The Grange property is to be held in trust by the National Grange until the Inactive State Grange is reorganized. (UMF 22.)

In *Most Worshipful Sons of Light Grand Lodge, etc. v. Sons of Light Lodge No. 9*, the California Court of Appeal held that the assets of a fraternal association are the property of all the members, not of any number less than all of them. (118 Cal. App. 2d 78, 84-85 (1953).) The Now Uncharted State Grange contends this case is inapplicable because it concerned an unincorporated association and, here, the National Grange and Now Uncharted State Grange are two separate corporations and entities, each of which has the right to own separate property. However, for the reasons discussed above, the Court rejects this argument. While the Now Uncharted State Grange may be a legally separate entity from the National Grange, the undisputed facts establish that the Now Uncharted State Grange was created as a subordinate division of the Order and actively participated in the Order and recognized it was governed by the National Grange's Digest of Laws for many years.

Indeed, it is a "fundamental mistake" ... "to rely solely on California corporations law in a vacuum, without reference to the articles of incorporation and bylaws" of the subordinate corporation, as well as the constitution of the larger entity. (*Huber v. Jackson* (2009) 175 Cal. App. 4th 663, 680; *New v. Kroeger* (2008) 167 Cal. App. 4th 800, 820.)

At oral argument, the Now Uncharted State Grange argued that National Grange's request for declaratory relief cannot be granted because Grange property has not been clearly defined. National Grange responded that it is entitled to all real and personal property of the Grange as of the time the Now Uncharted State Grange's Charter was revoked. The Court noted its concern that all of the Grange property at issue cannot be identified. However, based on the National Grange's Digest of Laws,

the Now Uncharted State Grange's Charter, Constitution, Articles of Incorporation, Bylaws, and participation in the Order, the Court finds that the Now Uncharted State Grange has the obligation to transfer to the Newly Chartered State Grange all Grange property in its possession or control as of the date its Charter was revoked.

#### Defendant McFarland's Arguments

In his separate opposition, Defendant McFarland sets forth many of the same arguments set forth by Defendants. His additional contentions are irrelevant as discussed below.

First, McFarland contends, based on Corporations Code sections 7213 and 7223, that National Grange lacks standing to remove him as President of the California State Grange and, therefore, precludes National Grange's request that this Court declare that he is no longer the President. McFarland's argument is not considered as National Grange has not requested declaratory relief in this form.

Second, McFarland contends his settlement of The California State Grange v. Agricultural Association of Vista is protected by the business judgment rule and that his suspension was improper because the California State Grange's Board of Directors found he did not violate Grange law. McFarland claims that this precludes National Grange's request that this Court declare he has been suspended as President and Director of the California State Grange. Again, National Grange has not requested declaratory relief in this form. Thus, McFarland's arguments are irrelevant.

The Now Uncharted State Grange's objections to evidence numbers 1 through 54 are OVERRULED.

Robert McFarland's objections to evidence numbers 1 through 41 are OVERRULED.

The National Grange's objections to the declarations of Rick Keel, Elizabeth Pullen, Robert D. Swanson, Damian Parr, Takashi Yogi, Kathy Bergeron, Bill Thomas, Jon Luvaas, Robert McFarland, and Larry Kroger are OVERRULED.

The National Grange's objections to the declaration of William A. Lapcevic are SUSTAINED.

Robert McFarland's request for judicial notice of the court's February 19, 2015 Minute Order, February 26, 2015 Second Amended Complaint, and March 27, 2015 Notice of Demurrer is GRANTED.

National Grange's requests for judicial notice of the Court's file in this action and the order of the United States District Court, Eastern District of California, 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.)

National Grange'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 \_\_\_\_\_

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