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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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NATIONAL GRANGE and
CALIFORNIA STATE GRANGE,
Plaintiffs,

v.

CALIFORNIA GUILD, formerly
doing business as "California
State Grange," and ROBERT
MCFARLAND,
Defendants.

Civ. No. 2:16-0201 WBS DB

ORDER RE: MOTION FOR SUMMARY
JUDGMENT

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Plaintiffs National Grange and California State Grange brought this action against defendants California Guild and Robert McFarland, alleging that defendants continue to violate their trademark, copyright, and tangible property rights after the conclusion of Nat'l Grange v. Cal. State Grange, Civ. No. 2:14-0676 WBS DAD (E.D. Cal. filed Mar. 12, 2014) ("Grange I"). (Compl. (Docket No. 1).)

Plaintiffs assert ten causes of action in their amended

1 Complaint: (1) false designation of origin under the Lanham Act,
2 15 U.S.C. § 1125(a)(1)(A); (2) false advertisement under the
3 Lanham Act, id. § 1125(a)(1)(B); (3) false advertisement under
4 the California Business and Professional Code, Cal. Bus. & Prof.
5 Code § 17500; (4) trademark infringement under the Lanham Act, 15
6 U.S.C. § 1114; (5) infringement of unregistered logo and trade
7 dress under the Lanham Act, 15 U.S.C. § 1125(a); (6) copyright
8 infringement under the Copyright Act, 17 U.S.C. § 106; (7) trade
9 libel under California common law; (8) intentional interference
10 with contractual relations under California common law; (9)
11 trespass under California common law; and (10) conversion under
12 California common law. (Am. Compl. at 38-51 (Docket No. 75).)
13 Defendants moved to dismiss plaintiffs' amended Complaint in its
14 entirety in August 2016. (Docket No. 77.) The court granted
15 defendants' motion as to plaintiffs' infringement of unregistered
16 logo and trade dress and intentional interference with
17 contractual relations claims, and denied the motion in all other
18 respects. (Nov. 15, 2016 Order at 23 (Docket No. 106).)
19 Plaintiffs have not filed a second amended complaint.

20 Defendants now move for summary judgment as to the
21 eight claims remaining in plaintiffs' amended Complaint
22 ("remaining claims"). (Defs.' Mot. (Docket No. 138).) They
23 contend that the remaining claims are barred by res judicata,
24 collateral estoppel, or the law of the case doctrine because the
25 claims were litigated and decided in Grange I or a related state
26 action the parties were involved in, Nat'l Grange v. Cal. State
27 Grange, No. 34-2012-00130439 CU MC GDS (Cal. Sup. Ct. filed Oct.
28 1, 2012) ("state action"). (See Defs.' Mot., Mem. ("Defs.'

1 Mem.") at i (Docket No. 138-1).)

2 Summary judgment is proper "if the movant shows that
3 there is no genuine dispute as to any material fact and the
4 movant is entitled to judgment as a matter of law." Fed. R. Civ.
5 P. 56(a). "[W]here the operative facts are substantially
6 undisputed, and the heart of the controversy is the legal effect
7 of such facts, such a dispute effectively becomes a question of
8 law that can, quite properly, be decided on summary judgment."¹
9 Joyce v. Renaissance Design Inc., No. CV 99-07995 LGB (EX), 2000
10 WL 34335721, at *2 (C.D. Cal. May 3, 2000); see also Braxton-
11 Secret v. A.H. Robins Co., 769 F.2d 528, 531 (9th Cir. 1985)
12 ("[W]here the palpable facts are substantially undisputed, [the
13 controverted] issues can become questions of law which may be
14 properly decided by summary judgment.").

15 Defendants' contention that the remaining claims are
16 barred by res judicata or collateral estoppel was raised at the
17 time defendants moved for dismissal of plaintiffs' amended
18 Complaint. (See Docket No. 77 at 17-18; Oct. 17, 2016 Tr. at 4-
19 6, 21-22 (Docket No. 103).) The court considered and rejected
20 that contention in its order granting defendants' motion to
21 dismiss in part. With respect to plaintiffs' Lanham Act and
22 California false advertisement claims, the court stated:

23 Grange I decided ownership of the word "Grange," and
24 enjoined defendants from the use of that term
25 The conduct alleged to support plaintiff's Lanham Act
[and California false advertisement] claims in this

26 ¹ The parties agree that there are no disputed issues of
27 material fact for purposes of the present Motion. (See Defs.'
28 Reply at 1-2 (Docket No. 151); Pls.' Opp'n at 1 (Docket No.
140).)

1 action is different from the conduct enjoined in
2 Grange I. It involves more than merely the use of the
3 word "Grange." To the extent that the complaint here
4 alleges that defendants are representing they are the
5 same organization as the California State Grange, that
6 they are responsible for the history and achievements
7 of the California State Grange, or making other false
8 or misleading representations causing confusion among
9 local granges, it goes beyond the complaint in Grange
10 I and seeks to enjoin different conduct. Accordingly,
11 the court will not dismiss plaintiffs' Lanham Act [and
12 California false advertisement] claims on res judicata
13 grounds.

14 (Nov. 15, 2016 Order at 16-17.) With respect to plaintiffs'
15 trespass and conversion claims, the court stated:

16 Plaintiffs' trespass and conversion claims are not
17 barred under the doctrine of res judicata by the
18 underlying state court action in this case because
19 that action remains pending on appeal. See Eichman v.
20 Fotomat Corp., 759 F.2d 1434, 1439 (9th Cir. 1985)
21 ("Under California law . . . a judgment is not final
22 for purposes of res judicata during the pendency of
23 and until the resolution of an appeal."); see also
24 Howard v. Am. Online Inc., 208 F.3d 741, 748 (9th Cir.
25 2000) ("The preclusive effect of a state court
26 judgment in federal court is based on state preclusion
27 law."). Neither does Grange I bar such claims, as
28 Grange I decided ownership of the word "Grange," (see
Apr. 20 Order at 3), not defendants' subsequent
alleged refusal to vacate and return Grange property.
See W. Radio Servs., 123 F.3d at 1192 ("In order for
res judicata to apply there must be...an identity of
claims...."). Accordingly, the court will not dismiss
plaintiffs' trespass and conversion claims on res
judicata grounds.

(Id. at 21-22.)²

² The court did not specifically address whether
plaintiffs' copyright infringement and trade libel claims were
barred by res judicata or collateral estoppel in ruling on
defendants' motion to dismiss because defendants did not
specifically argue for dismissal of those claims on res judicata
or collateral estoppel grounds. They make no such arguments now,
either.

1 Defendants cite no new facts, absence of facts, or law
2 in the present Motion that support granting them summary judgment
3 on res judicata or collateral estoppel grounds. Having decided
4 that the remaining claims are not barred on res judicata or
5 collateral estoppel grounds at the time of defendants' motion to
6 dismiss, and being presented with no new information to rule
7 otherwise, the court will not grant summary judgment to
8 defendants on res judicata or collateral estoppel grounds now.
9 See United States v. Jingles, 702 F.3d 494, 499 (9th Cir. 2012)
10 ("Under the 'law of the case' doctrine, a court is ordinarily
11 precluded from reexamining an issue [it] previously decided . . .
12 in the same case.").

13 Defendants do raise, for the first time, an argument
14 that the remaining claims are barred based on the law of the case
15 doctrine. According to defendants, judgments entered in Grange I
16 and the state action, and the appellate decisions to be rendered
17 in those cases,³ constitute the law of "this case." (Defs.' Mem.
18 at 6.) Because those rulings concern "the [same] relief
19 [plaintiffs] seek[] in this case," defendants argue, they bar
20 plaintiffs from asserting the remaining claims. (Id. at 6-7.)

21 Defendants misunderstand the law of the case doctrine.
22 That doctrine counsels courts to refrain from reconsidering
23 issues previously decided in the same case. See Jingles, 702
24 F.3d at 499 ("Under the 'law of the case' doctrine, a court is
25 ordinarily precluded from reexamining an issue [it] previously

26 ³ Defendants have appealed both Grange I and the state
27 action. (See Defs.' Req. for Judicial Notice Ex. I, Grange I
28 Notice of Appeal (Docket No. 139-1); id. Ex. H, State Action
Appellate Brief (Docket No. 139-10).)

1 decided . . . in the same case." (emphasis added)); see also
2 Arizona v. California, 460 U.S. 605, 618 (1983) ("[T]he [law of
3 the case] doctrine posits that when a court decides upon a rule
4 of law, that decision should continue to govern the same issues
5 in subsequent stages in the same case." (emphasis added)). The
6 judgments entered and appellate decisions to be rendered in
7 Grange I and the state action are rulings of other cases. To the
8 extent those rulings may bar plaintiffs from asserting the
9 remaining claims, they would do so pursuant a theory of res
10 judicata or collateral estoppel. The court has already ruled
11 that Grange I and the state action do not bar plaintiffs from
12 asserting the remaining claims pursuant to those theories. That
13 ruling, unlike the rulings in Grange I and the state action, is
14 the law of this case.

15 IT IS THEREFORE ORDERED that defendants' Motion for
16 summary judgment be, and the same hereby is, DENIED.

17 Dated: August 4, 2017

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19 WILLIAM B. SHUBB
20 UNITED STATES DISTRICT JUDGE
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