

IN THE IOWA SUPREME COURT

---

SUPREME COURT NO. 22-1601

---

HUNTER THREE FARMS, LLC, Plaintiff-Appellant,

vs.

RICHARD HUNTER, individually and as member of Hunter Three Farms,  
LLC, Defendant-Appellee,

---

APPEAL FROM THE IOWA DISTRICT COURT  
FOR GREENE COUNTY  
THE HONORABLE JUDGE DEREK JOHNSON  
NO. LACV022075

---

**PLAINTIFF-APPELLANT'S FINAL BRIEF ON APPEAL**

---

/s/ Bradley M. Strouse

Bradley M. Strouse

AT0009732

/s/ Adam J. Babinat

Adam J. Babinat

AT0013359

Redfern, Mason, Larsen & Moore, P.L.C.

415 Clay Street, P.O. Box 627

Cedar Falls, IA 50613

Phone: (319) 277-6830

Fax: (319) 277-3531

Email: [strouse@cflaw.com](mailto:strouse@cflaw.com)

[babinat@cflaw.com](mailto:babinat@cflaw.com)

ATTORNEYS FOR PLAINTIFF-APPELLANT

## TABLE OF CONTENTS

Table of Contents .....	2
Table of Authorities .....	4
Statement of the Issues .....	6
Statement of the Case .....	8
Statement of Facts.....	9
Routing Statement.....	15
Argument .....	16
I. HUNTER THREE FARMS, LLC HAS STANDING TO BRING SUIT ON A DEBT OWED TO IT .....	16
a. Preservation of Error.....	16
b. Standard of Review.....	16
c. Richard Hunter’s status as a member of Hunter Three Farms, LLC has no bearing on whether it could bring suit against him .....	17
i. <i>Hunter Three Farms, LLC merely needed unanimous                consent from all disinterested members to bring                this lawsuit</i> .....	20
ii. <i>A derivative action is inapplicable to the present case                and unnecessary</i> .....	23
iii. <i>Debt collection is an ordinary                business action</i> .....	26
Conclusion.....	31
Request For Oral Submission .....	31

Certificate of Compliance .....32  
Certificate of Cost..... 33  
Certificate of Service.....34

## TABLE OF AUTHORITIES

### Cases

#### United States Supreme Court Decisions

<i>Lujan v. Defs. Of Wildlife</i> , 504 U.S. 555, 112 S. Ct. 2130, 119 L.Ed.2d 351 (1992) .....	18
--	----

#### Iowa Supreme Court Decisions

<i>Citizens for Responsible Choices v. City of Shenandoah</i> , 686 N.W.2d 470 (Iowa 2004).....	18
<i>Holden v. Construction Machinery Co.</i> , 202 N.W.2d 348 (Iowa 1972) .....	23
<i>Homan v. Branstad</i> , 887 N.W.2d 153 (Iowa 2016).....	17, 27
<i>Iowa Citizens for Cmty. Improvement v. State</i> , 962 N.W.2d 780 (Iowa 2021).....	16, 17, 18
<i>Kunde v. Est. of Bowman</i> , 920 N.W.2d 803 (Iowa 2018).....	16
<i>Meier v. Senecaut</i> , 641 N.W.2d 532 (Iowa 2002).....	16
<i>Nelson v. Lindaman</i> , 867 N.W.2d 1 (Iowa 2016).....	17
<i>Weltzin v. Nail</i> , 618 N.W.2d 293 (Iowa 2000).....	26

#### Other Jurisdictions

<i>United Food v. Zuckerberg</i> , 262 A.3d 1034 (Del. 2021).....	25
<i>Vecchitto v. Vecchitto</i> , No. CV084008482, 2008 WL 4210784 (Conn. Super. Ct. Aug. 26, 2008).....	29
<i>Jackson Enterprises v. Jackson</i> , No. FTCBV186070521S, 2018 WL 7822093 (Conn. Super. Ct. July 25, 2018).....	29

## Statutes

Iowa Code § 489.105 (2022).....	20
Iowa Code § 489.110 (2022).....	20
Iowa Code § 489.302 (2022) .....	21
Iowa Code § 489.407 (2022).....	21, 26, 27
Iowa Code § 489.409 (2020).....	19
Iowa Code § 489.409 (2022).....	22
Iowa Code § 489.902 (2022).....	13, 24
Iowa Code § 490.862 (2022).....	22

## Rules

Iowa R. Civ. P. 1.981 (2022) .....	17, 27
Iowa R. App. P. 6.1101 (2022) .....	15

## Secondary Sources

Ribstein, Larry E & Keatinge, Robert R., 2 Ribstein & Keatinge on Ltd. Liab. Cos. § 13:2, Westlaw (Nov. 2022) .....	22
Doré, Matthew, 6 Iowa Prac., Business Organizations § 28:7, Westlaw (Oct. 2022).....	25
Doré, Matthew, 6 Iowa Prac., Business Organizations § 28:11, Westlaw (Oct. 2022) .....	22
Doré, Matthew, 6 Iowa Prac., Business Organizations § 39:4, Westlaw (Oct. 2022).....	23, 24, 26
54 C.J.S. <i>Limited Liability Companies</i> § 12, Westlaw (Nov. 2022) .....	28

## STATEMENT OF ISSUES PRESENTED FOR REVIEW

### I. HUNTER THREE FARMS, LLC HAS STANDING TO BRING SUIT ON A DEBT OWED TO IT.

#### a. Preservation of Error.

*Meier v. Senecaut*, 641 N.W.2d 532 (Iowa 2002)

#### b. Standard of Review.

*Kunde v. Est. of Bowman*, 920 N.W.2d 803 (Iowa 2018)

*Iowa Citizens for Cmty. Improvement v. State*, 962 N.W.2d 780 (Iowa 2021)

Iowa R. Civ. P. 1.981(3)

*Homan v. Branstad*, 887 N.W.2d 153 (Iowa 2016)

*Nelson v. Lindaman*, 867 N.W.2d 1 (Iowa 2016)

#### c. **Richard Hunter's status as a member of Hunter Three Farms, LLC has no bearing on whether it could bring suit against him.**

*Iowa Citizens for Cmty. Improvement v. State*, 962 N.W.2d 780 (Iowa 2021)

*Citizens for Responsible Choices v. City of Shenandoah*, 686 N.W.2d 470 (Iowa 2004)

*Lujan v. Defs. of Wildlife*, 504 U.S. 555 (1992)

Iowa Code § 489.409(1) (2020)

Iowa Code § 489.409(4) (2020)

#### i. *Hunter Three Farms, LLC merely needed unanimous consent from all disinterested members to bring this lawsuit.*

Iowa Code § 489.105(1) (2022)

Iowa Code § 489.302 (2022)

Iowa Code § 489.110(1) (2022)

Iowa Code § 489.110(2) (2022)

Iowa Code § 489.407(1)(c) (2022)

Iowa Code § 489.407(1)(d) (2022)

Ribstein, Larry E & Keatinge, Robert R., 2 Ribstein & Keatings on Ltd. Liab. Cos. § 13:2, Westlaw (Nov. 2022)

Iowa Code § 490.862 (2022)

Iowa Code § 489.409(1) (2022)

Doré, Matthew, 6 Iowa Prac., Business Organizations § 28:11, Westlaw (Oct. 2022)

- ii. *A derivative action is inapplicable and unnecessary to the present case.*

Doré, Matthew, 6 Iowa Prac., Business Organizations § 39:4, Westlaw (Oct. 2022)

*Holden v. Construction Machinery Co.*, 202 N.W.2d 348 (Iowa 1972)

Iowa Code § 489.902(1) (2022)

Doré, Matthew, 6 Iowa Prac., Business Organizations § 28:7, Westlaw (Oct. 2022)

*United Food v. Zuckerberg*, 262 A.3d 1034 (Del. 2021)

*Weltzin v. Nail*, 618 N.W.2d 293 (Iowa 2000)

- iii. *Debt collection is an ordinary business action.*

Doré, Matthew, 6 Iowa Prac., Business Organizations § 39:4, Westlaw (Oct. 2022)

Iowa Code § 489.407(1)(d) (2022)

Iowa Code § 489.407(2)(a) (2022)

Iowa R. Civ. P. 1.981(3) (2022)

*Homan v. Branstad*, 887 N.W.2d 153 (Iowa 2016)

54 C.J.S. *Limited Liability Companies* § 12, Westlaw (Nov. 2022)

*Vecchitto v. Vecchitto*, No. CV084008482, 2008 WL 4210784 (Conn. Super. Ct. Aug. 26, 2008)

*Jackson Enterprises v. Jackson*, No. FTCBV186070521S, 2018 WL 7822093 (Conn. Super. Ct. July 25, 2018)

## STATEMENT OF THE CASE

Hunter Three Farms, LLC (“Hunter Three Farms”) is an Iowa limited liability company with three voting members; each member controls one-third of the LLC’s voting units. Pl.’s App. on Mot. Summ. J. 4, App. 266. Those three voting members are the Robert P. Hunter Revocable Trust, the Gary G. Hunter Revocable Trust, and Richard Hunter. Pl.’s App. on Mot. Summ. J. 4, App. 266.

In 2020, Richard Hunter submitted a claim to the Syngenta Corn Seed Settlement Program for settlement proceeds owed to Hunter Three Farms. Pl.’s App. on Mot. Summ. J. 18, 34, App. 280, 296. On or about December 30, 2020, Richard Hunter received a check payable to “Hunter Farms”. Pl.’s App. on Mot. Summ. J. 78, App. 340. Richard Hunter did not deposit that check into Hunter Three Farms’ bank account, though; he deposited the funds into an account he controlled to the exclusion of the LLC and its other members. Pl.’s App. on Mot. Summ. J. 6, 15, App. 268, 277. After a demand was made that he turn over the funds, Richard Hunter refused to pay the settlement proceeds to Hunter Three Farms. Def.’s Ex. Q to Mot. for Summ. J. 1, App. 231; Def.’s Ex. R to Mot. for Summ. J. 1, App. 237.

The remaining, disinterested members in Hunter Three Farms authorized this lawsuit against Richard Hunter to recover the settlement



proceeds. Pet. at Law (Aug. 23, 2021), App. 5-8. Hunter Three Farms also brought claims against Richard Hunter for breaching the duty of loyalty he owed the company and for breaching the duty of good faith and fair dealing he owed it. Pet. at Law, App. 8-9.

Richard Hunter denied the allegations and, on July 14, 2022, moved for summary judgment alleging in part that Hunter Three Farms lacked standing to pursue its claims against him. Answer of Def. (Nov. 29, 2021), App. 11-19; Def.'s Mot. for Summ. J. (July 14, 2022), App. 34. Hunter Three Farms timely resisted. Pl.'s Resist. To Def.'s Mot. for Summ. J. (July 29, 2022), App. 345-56. On September 6, 2022, the district court found Hunter Three Farms lacked standing because it was required to get Richard Hunter's consent to file this lawsuit against him. *See* Order 9 (Sept. 6, 2022), App. 532.

Hunter Three Farms timely filed its Notice of Appeal on September 29, 2022. Not. of Appeal (Sept. 29, 2022), App. 535.

### **STATEMENT OF FACTS**

On or about December 30, 2020, Richard Hunter received a check made payable to "Hunter Farms" from the Syngenta Corn Seed Settlement Program. Pl.'s App. on Mot. Summ. J. 78, App. 340. Hunter Farms operated as a general partnership until March 3, 2017. Pl.'s App. on Mot. Summ. J. 4, App. 266. On or about March 3, 2017, Hunter Farms was converted into the limited

partnership known as Hunter Three Farms L.P. Pl.’s App. on Mot. Summ. J. 4, App. 266. Then, on or about March 8, 2017, Hunter Three Farms L.P. was converted into the limited liability company known as Hunter Three Farms, LLC. Pl.’s App. on Mot. Summ. J. 4, App. 266.

Richard Hunter did not deposit the check he received payable to “Hunter Farms” into a Hunter Farms account or a Hunter Three Farms account. Pl.’s App. on Mot. Summ. J. 6, 15, App. 268, 277. Instead, he deposited the funds into a bank account he controlled. Pl.’s App. on Mot. Summ. J. 6, 15, App. 268, 277.

Richard Hunter did not contact the other members of Hunter Three Farms about the Syngenta Corn Seed Settlement Program when he received notice of the program on or about January 8, 2020. *See* Pl.’s App. on Mot. Summ. J. 75, App. 337 (“Richard Hunter did not contact the other members of Hunter Three Farms, LLC regarding the Corn Seed Settlement Program . . . .”); *see* Pl.’s App. on Mot. Summ. J. 56-73, App. 318-35. He<sup>1</sup> submitted a

---

<sup>1</sup> The record on summary judgment reveals that Richard Hunter did not personally file the claim, but instead had his sons submit the claim on his behalf. Pl.’s Suppl. App. on Mot. Summ. J. 3, App. 265. For the sake of

claim on behalf of “Hunter Farms” using the tax identification number for Hunter Three Farms. Pl.’s App. on Mot. Summ. J. 18, 34, App. 280, 296. When he submitted his claim, Richard Hunter provided the mailing address he used for his separate business interests: 2014 D Avenue, Scranton, Iowa. Pl.’s App. on Mot. Summ. J. 18, 27-31, 34, App. 280, 289-93, 296.

The Syngenta Corn Seed Settlement Program required a Form W-9. On or about or about November 10, 2020, the Syngenta Corn Seed Settlement Program sent a letter to:

Richard Neil Hunter  
Hunter Farms  
2014 D Ave  
Scranton, IA 51462

Pl.’s App. on Mot. Summ. J. 40, App. 302. The letter advised Richard Hunter that he did not submit an acceptable W-9 Form with his claim. Pl.’s App. on Mot. Summ. J. 40, App. 302. He did submit a Form W-9 at some point in time to the Syngenta Corn Seed Settlement Program. Pl.’s App. on Mot. Summ. J. 34, 48, App. 296, 310. The Form W-9 submitted identified “Hunter Farms” as the business, and used the tax identification number for Hunter Three Farms. Pl.’s App. on Mot. Summ. J. 34, 48, App. 296, 310.

---

convenience and to avoid confusion, Appellant will be referring solely to Richard Hunter throughout this Brief.

In 2021, Hunter Three Farms received a 1099-MISC for the proceeds Richard Hunter received from the Syngenta Corn Seed Settlement Program. Pl.’s App. on Mot. Summ. J. 80, App. 342. On or about April 7, 2021, after receiving the 1099-MISC, Robert Hunter and Gary Hunter sent Richard Hunter a letter requesting the proceeds from the Syngenta Corn Seed Settlement. Def.’s Ex. Q to Mot. for Summ. J. 1, App. 231. Richard Hunter responded on or about April 14, 2021. Def.’s Ex. R to Mot. for Summ. J. 1, App. 237. In his response, he claimed that he “applied for Richard’s 1/3 only of Syngenta corn seed settlement, not for any part of Robert or Gary’s . . . .” Def.’s Ex. R to Mot. for Summ. J. 1, App. 237.

Hunter Three Farms filed a Statement of Authority on March 21, 2017. Pl.’s App. on Mot. Summ. J. 81-82, App. 343-44. Under the Statement of Authority, “[a] majority of the voting membership interests are authorized to make ordinary business decisions.” Pl.’s App. on Mot. Summ. J. 82, App. 344. “All other decisions, including any change to this Statement of Authority, will require the consent of all members.” Pl.’s App. on Mot. Summ. J. 82, App. 344. Hunter Three Farms has three voting members, each of whom control one-third of the voting units. Pl.’s App. on Mot. Summ. J. 4, App. 266. Richard Hunter is one of those voting members. Pl.’s App. on Mot. Summ. J. 4, App. 266.

On August 23, 2021, all of the disinterested members initiated this lawsuit on behalf of Hunter Three Farms against Richard Hunter. Pet. at Law, App. 5. The Petition alleged (1) that Richard Hunter unlawfully converted the Syngenta Corn Seed Settlement funds of Hunter Three Farms; (2) that he breached his fiduciary duty as a member of the LLC for converting the Syngenta Corn Seed Settlement funds; (3) that he breached his duty of good faith and fair dealing by converting the funds; (4) that he would be unjustly enriched if he was permitted to retain the funds. *See generally* Pet. at Law, App. 5-10. On November 29, 2021, Richard Hunter filed his Answer denying the allegations against him. Answer of Def., App. 11-19.

Richard Hunter moved for summary judgment on July 14, 2022. Def.’s Mot. for Summ. J. (July 14, 2022), App. 34. He contended he was entitled to summary judgment, in relevant part,<sup>2</sup> because Hunter Three Farms’ “decision

---

<sup>2</sup> Richard Hunter also argued dismissal was proper because Hunter Three Farms failed to comply with the procedures of Iowa Code section 489.902 before it brought its claims against him, and because Hunter Three Farms was not the successor-in-interest to Hunter Farms. Def.’s Mot. for Summ. J. ¶3(b)-(c), App. 34. However, the district court did not address these arguments; thus,

to file a lawsuit against one of its own members was outside the ordinary course of its business, and the LLC failed to obtain the unanimous consent of its members as required under its own operating agreement and Iowa law prior to instituting suit.” Def.’s Mot. for Summ. J.¶3(a), App. 34.

Hunter Three Farms, LLC timely resisted the motion for summary judgment on July 29, 2022.<sup>3</sup> Pl.’s Resist. to Def.’s Mot. for Summ. J. (July 29, 2022), App. 345-56. A hearing was held on the Motion for Summary Judgment on August 17, 2022 via video conference. On September 6, 2022, the Honorable Judge Derek Johnson entered an Order dismissing this case because Hunter Three Farms lacked standing. Order 9 (Sept. 6, 2022), App. 532. Specifically, the district court found that “[t]his litigation is not within the scope of Hunter Three Farms, LLC’s ordinary course of business and

---

these issues are not relevant to this appeal. *See* Order (Sept. 6, 2022), App. 524-32.

<sup>3</sup> Hunter Three Farms filed its own Motion for Summary Judgment on July 15, 2022. Pl.’s Mot. for Summ. J. (July 15, 2022), App. 242. The district court explicitly made no ruling on the merits of Hunter Three Farms’ claims. Order 9 (Sept. 6, 2022), App. 532. Thus, Hunter Three Farms’ motion for summary judgment is not before this Court on appeal.

Plaintiff needed consent of all members to file this action.” Order 9, App. 532.

The district court noted the Statement of Authority for Hunter Three Farms,

LLC “does not define what is an ‘ordinary’ business decision. Order 5, App.

528. The district court stated:

The lack of an operating agreement and the referenced Statement of Authority give this court little information to determine what is or is not within the scope of Plaintiff’s business. Defendant points to the inclusion of real property on the Statement of Authority, the “Grimes Property,” owned by Hunter Three Farms, LLC, as well the specific conditions required for sale of that property, as support that Hunter Three Farms, LLC’s ordinary course of business would be “[d]ecisions dealing with the planting, harvesting, marketing, and investment into the Grimes Property.” (Def. Memo. Supp. Mot. Summ. J. at 8).

Order 6, App. 529.

Hunter Three Farms, LLC timely filed its Notice of Appeal on September 29, 2022. App. 535.

### **ROUTING STATEMENT**

Hunter Three Farms requests the Iowa Supreme Court retain this case. This case involves the question of whether an LLC can directly sue one of its members based on an activity within the LLC’s ordinary course of business. The questions on appeal involve matters of first impression related to the interpretation of the provisions of Iowa Code Chapter 489. *See Iowa R. App. P. 6.1101(2)(c)*. Further, the questions raised by this appeal are fundamental issues related to the law for LLCs in Iowa which are of broad public

importance that need to be resolved by the Iowa Supreme Court. *See* Iowa R. App. P. 6.1101(2)(d).

## **ARGUMENT**

### **I. HUNTER THREE FARMS, LLC HAS STANDING TO BRING SUIT ON A DEBT OWED TO IT.**

#### **a. Preservation of Error.**

The issue on appeal is whether Hunter Three Farms has standing to bring suit against Richard Hunter with a vote by all disinterested members of the LLC. This issue was raised by Richard Hunter’s motion for summary judgment, heard in oral argument, and decided by the district court on September 6, 2022. *See* Def.’s Memo. in Supp. of Mot. for Summ. J. 9-12, App. 44-47; Pl.’s Resist. to Def.’s Mot. for Summ. J. 2-10, App. 346-354; Order 9, App. 532. Error has been preserved on this issue. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). (“It is a fundamental doctrine of appellate review that issues must be ordinarily be raised and decided by the district court . . .”).

#### **b. Standard of Review.**

“The standard of review for district court rulings on summary judgment is for corrections of error of law.” *Kunde v. Est. of Bowman*, 920 N.W.2d 803, 806 (Iowa 2018). The standard of review does not change simply because the issue on appeal is the question of standing. *See Iowa Citizens for Cmty.*



*Improvement v. State*, 962 N.W.2d 780, 787 (Iowa 2021) (“We review questions of standing and whether an action should be dismissed as nonjusticiable for correction of errors at law.”).

Summary judgment is appropriate only when the moving party has shown “that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Iowa R. Civ. P. 1.981(3). In determining whether a grant of summary judgment is appropriate, the Court “examines the record in the light most favorable to the nonmoving party, drawing all legitimate inferences that may be drawn from the evidence in his or her favor.” *Homan v. Branstad*, 887 N.W.2d 153, 163-64 (Iowa 2016). Summary judgment should only be granted “if the record reveals only a conflict concerning the legal consequences of undisputed facts.” *Nelson v. Lindaman*, 867 N.W.2d 1, 6 (Iowa 2016).

**c. Richard Hunter’s status as a member of Hunter Three Farms, LLC has no bearing on whether it could bring suit against him.**

The question before this Court is whether an Iowa limited liability company has standing to sue when a unanimous vote of the disinterested members authorized the lawsuit. In Iowa, to have standing a party “must (1) have a specific personal or legal interest in the litigation and (2) be injuriously affected.” *Iowa Citizens for Cmnty. Improvement*, 962 N.W.2d at 790 (quoting

*Citizens for Responsible Choices v. City of Shenandoah*, 686 N.W.2d 470, 475 (Iowa 2004)) (internal quotations omitted). The “injuriously affected” prong of standing incorporates the *Lujan* test found in federal court. *Iowa Citizens for Cmnty. Improvement*, 962 N.W.2d at 790 (citing *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 560-61 (1992)). The *Lujan* test states “a plaintiff must show not only (1) injury in fact, but also that the injury in fact (2) is fairly traceable to the defendants’ conduct and (3) is likely to be redressed by a favorable decision.” *Iowa Citizens for Cmnty. Improvement*, 962 N.W.2d at 790 (citing *Lujan*, 504 U.S. at 560-61).

Each of these prongs are satisfied based solely on the allegations in the Petition. Hunter Three Farms alleges Richard Hunter submitted a claim to the Syngenta Corn Seed Settlement Program which belonged to the LLC. Pet. at Law ¶14, App. 7. It further alleges Richard Hunter received a check in the amount of \$62,467.91 in full payment of the LLC’s claim in the class action settlement. Pet. at Law ¶15, App. 7. Hunter Three Farms then alleges Richard Hunter deposited these LLC funds in an account which he controlled and refused to surrender the funds to the LLC. Pet. at Law ¶¶16, 22, App. 7-8. Hunter Three Farms brought claims to recover the LLC’s funds Richard Hunter converted, and to recover damages caused by his breach of the duties of loyalty and good faith and fair dealing he owed the LLC.

Hunter Three Farms has a personal and legal interest in this litigation. With respect to its conversion and unjust enrichment claims, Hunter Three Farms is seeking money which it is rightfully owed. With respect to the breach of loyalty claim, the duty of loyalty breached by Richard Hunter was one explicitly stated by statute as being owed to the company. Iowa Code § 489.409(1) (2020). The duties owed by Richard Hunter to the LLC were to be performed consistent with the duty of good faith and fair dealing. *Id.* § 489.409(4).

Richard Hunter failed to notify the other members of the LLC about the Syngenta Corn Settlement Program, he completed a claim on the company's behalf or at least using its name and tax identification number, he received a check payable to "Hunter Farms" (which was subsequently converted to "Hunter Three Farms, LLC", the plaintiff here), and then he deposited the check into an account held by one of his other businesses. These facts describe a clear injury to Hunter Three Farms—financial harm. The filing of this lawsuit affords Hunter Three Farms with a remedy—monetary damages—which can help redress its injuries.

Richard Hunter contends that Hunter Three Farms lacked standing because it lacks a legal interest in the lawsuit “absent the unanimous consent<sup>4</sup> of its voting members to act outside the course of its ordinary business . . . .” Def.’s Memo. in Supp. of Mot. for Summ. J. 10 (July 14, 2022), App. 45. A legal interest in the lawsuit and authority to bring the suit are not the same. The question, therefore, is not one of standing at all.

- i. *Hunter Three Farms, LLC merely needed unanimous consent from all disinterested members to bring this lawsuit.*

If this Court finds the question of authority to bring suit needs to be addressed to determine standing, the issue of authority requires the Court to determine whether a minority member can block the LLC from pursuing any claim against them. Hunter Three Farms has the capacity to sue in its own name. *See* Iowa Code § 489.105(1) (“[A] limited liability has the capacity to sue . . . .”). Iowa Code Chapter 489 controls where, as here, the LLC lacks an operating agreement. *See* Iowa Code § 489.110(1)-(2). The only documentation in place for Hunter Three Farms which arguably provides

---

<sup>4</sup> Hunter Three Farms continues to argue on appeal that the filing of a lawsuit to collect debt owed to it is a decision within the ordinary course of the LLC’s business activities and, thus, only required a vote of the majority members. This matter will be addressed later in the Brief.

guidance on whether this lawsuit required the unanimity of the disinterested members is the Statement of Authority. The Statement of Authority only informs third-parties as to who may bind the LLC. *See* Iowa Code § 489.302(3) (“A statement of authority affects only the power of a person to bind a limited liability company to persons that are not members.”).

Further, with the exception of a provision outlining when the real estate the LLC owns may be sold, the Statement of Authority merely restates the provisions of section 489.407(1). *Compare* Iowa Code § 489.407(1)(c)-(d) *with* Pl.’s App. on Mot. Summ. J. 82, App. 344. Matters involving the ordinary course of Hunter Three Farms’ activities may be decided by the majority of the members. *See* Iowa Code § 489.407(1)(c); Pl.’s App. on Mot. Summ. J. 82, App. 344. Matters outside the ordinary course of the LLC’s activities require consent of all members. *See* Iowa Code § 489.407(1)(d); Pl.’s App. on Mot. Summ. J. 82, App. 344.

Hunter Three Farms’ Statement of Authority, much like section 489.407, does not define what “the ordinary course of activities” means. *See* Iowa Code § 489.407(1)(c)-(d); Pl.’s App. on Mot. Summ. J. 82, App. 344. There is also a lack of Iowa case law on the subject.

The rule proposed by Richard Hunter, which was adopted by the district court, is that unanimity of all members of an LLC—including the interested

member—is required to initiate any lawsuit involving a minority member. This rule is illogical and would be rife for abuse. The better rule is that unanimity of the disinterested members is all that is required to maintain a lawsuit. *See* Ribstein, Larry E & Keatinge, Robert R., 2 Ribstein & Keatinge on Ltd. Liab. Cos. § 13.2, Westlaw (Nov. 2022). This rule would be analogous to what is already found in Iowa corporate law. *See* Iowa Code § 490.862.

This is evident by the case before this Court. Richard Hunter has a conflict of interest in any vote to pursue a lawsuit against himself to recover the Syngenta settlement proceeds. On the one hand, he possesses a duty of loyalty to Hunter Three Farms. *See* Iowa Code § 489.409(1). On the other hand, he wishes to retain the money for his own benefit. How can he fulfill his obligations to Hunter Three Farms under his duty of loyalty if he is the sole reason the company cannot pursue legitimate claims to recover money it is owed? As Professor Matthew Doré notes in the context of a corporation, a member such as Richard Hunter “cannot necessarily be expected to exercise independent judgment concerning the transaction, let alone to discharge the obligation to act in the corporation’s best interests in connection with it.” Doré, Matthew, 6 Iowa Prac., Business Organizations § 28:11, Westlaw (Oct. 2022).

The rule proposed by Richard Hunter would also lead to absurd results for an LLC which lacks an operating agreement or has an operating agreement which merely restates the default rule. It is his position that litigation is an extraordinary business activity for an operation such as Hunter Three Farms. Would unanimity be required for Hunter Three Farms to defend a lawsuit which arose because a minority member improperly authorized a contract with a third-party? The minority member would presumably be against defending the matter, as he is incentivized to have the LLC ratify his unauthorized conduct. This example illustrates how the rule proposed by Richard Hunter would be weaponized by a bad actor to throw up procedural hurdles which may insulate them from liability. Such an illogical rule cannot be the current state of Iowa LLC law. Thus, it was proper for Hunter Three Farms to initiate a lawsuit approved by all of the disinterested members.

- ii. *A derivative action is inapplicable and unnecessary to the present case.*

Richard Hunter's response will be that a derivative action is required. A derivative action exists so members acting in their individual capacity can enforce the company's rights for the benefit of the company, particularly when "those in control of a business organization's decision to sue might . . . be unwilling to protect its interests." Doré, Iowa Prac., Business Organizations § 39:4, Westlaw. As the district court wrote, "A derivative action is a suit where

the business entity stands to suffer loss that will detrimentally impact the entity's members if appropriate action is not taken and those holding authority within the entity fail or refuse to act." Order 9, App. 353. (citing *Holden v. Construction Machinery Co.*, 202 N.W.2d 348, 365 (Iowa 1972)). Prohibiting individual action in favor of derivative actions "respects the management prerogatives of those who control the business organization." Doré, Iowa Prac., Business Organizations § 39:4, Westlaw.

In this case, all of the disinterested members of Hunter Three Farms decided to act. A derivative action, by its very nature, is applicable and necessary when a minority member of an LLC looks to question the decision of the LLC's management and enforce a right of the company. This is evident by reviewing section 489.902's demand requirement. Iowa Code § 489.902(1) (2022). Under section 489.902:

A member may maintain a derivative action to enforce a right of a limited liability company as follows:

1. The member first makes a demand on the other members in a member-managed limited liability company, or the managers of a manager-managed limited liability company, requesting that they cause the company to bring an action to enforce the right, and the managers or other members do not bring the action within ninety days from the date the demand was made unless the member has earlier been notified that the demand has been rejected by the company or unless irreparable injury to the company would result by waiting for the expiration of the ninety-day period.



*Id.* Section 489.902 articulates a procedure wherein a minority member can demand the LLC act to enforce a right and, if said demand goes unanswered, the minority member can enforce the right on behalf of the LLC. *Id.*

The derivative procedure is unnecessary though when, as was the case here, the majority of disinterested members agreed to pursue a certain course of action. When a member brings a derivative suit, they are either (a) admitting, by making the demand, that a majority of the management is unbiased, or (b) seeking to prove, by alleging the futility of a demand, that a majority of the management is biased and unable to be trusted to bring a lawsuit. *See Doré, Iowa Prac., Business Organizations § 28:7, Westlaw* (“Some courts treat the demand as an acknowledgment by plaintiff that the board is disinterested and independent, and that the board may therefore properly exercise its business judgment concerning the derivative claim . . . .”); *see also United Food v. Zuckerberg*, 262 A.3d 1034, 1058 (Del. 2021) (explaining that the new test for demand futility is to be applied to each director to determine if a majority of the board is capable of exercising an independent business judgment). The key focus is determining whether a majority of the disinterested managers of the LLC (who, in this case, are members) are capable of making the decision to bring suit.

The rule proposed by Richard Hunter and accepted by the district court is unnecessarily complex and costly. If a self-dealing member owes a debt to an LLC, the member can unilaterally force the disinterested members to initiate the more complex derivative suit procedure. *See Weltzin v. Nail*, 618 N.W.2d 293, 301 (Iowa 2000) (acknowledging the complexity of derivative actions). This would unnecessarily complicate simple cases, such as debt collection litigation. When all of the disinterested members agree to proceed with litigation, a derivative suit is unnecessary.

iii. *Debt collection is an ordinary business action.*

“Whether a business organization initiates or defends litigation is a business decision.” Doré, Iowa Prac., Business Organizations § 39:4, Westlaw. In a limited liability company, the company’s members control company litigation. *Id.* As the decision to initiate or defend debt collection actions is a routine enterprise for most for-profit businesses, a simple majority of members (disinterested or otherwise) is all that is necessary to initiate this conversion action against Richard Hunter. *See* Iowa Code § 489.407(1)(d); Pl.’s App. on Mot. Summ. J. 82, App. 344.

In a member-managed LLC, the management and conduct of the company is dictated by its members. Iowa Code § 489.407(2)(a). As previously noted, section 489.407 does not define “the ordinary course of

activities”, but it does provide some insight as to what is extraordinary. Section 489.407(2)(c), which describes what acts require unanimous consent of members, provides that “[a]n act outside of the course of the activities of the company, including selling, leasing, exchanging, or otherwise disposing of all, or substantially all, of the company’s property . . . .” *Id.* § 489.407(2)(c). The theme of the items considered by the Iowa legislature to be outside the course of normal business activities is that each involves a transfer of interest to “all, or substantially all” of the corporate assets. For example, the transfer of a LLC’s corporate financial assets from one bank to another would likely be viewed as an extraordinary business activity as it involves entrusting a new third-party with the LLC’s funds. Debt collection, however, is not similar to the conduct recognized by the Iowa Code as being “outside the course” of routine business activities.

As a preliminary matter, as noted by the district court, the record prepared by the Defendants on summary judgment is devoid of facts as to what constitutes Hunter Three Farms’ ordinary business activities. *See* Order 6, App. 350 (“The lack of an operating agreement and the referenced Statement of Authority give this court little information to determine what is or is not within the scope of Plaintiff’s business.”). This fact question alone warranted denial of Richard Hunter’s motion for summary judgment. Iowa R.

Civ. P. 1.981(3) (summary judgment should be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”); *Homan v. Branstad*, 887 N.W.2d at 163-64 (describing how the district court “examines the record in the light most favorable to the nonmoving party, drawing all legitimate inferences that may be drawn from the evidence in his or her favor.”).

Notwithstanding the limited factual basis for the scope of the LLC’s business, the district court found that Hunter Three Farms is a general farming operation. *See* Order 6, App. 350. It found that collecting debt owed through a corn seed settlement program might also part of the ordinary course of business. *Id.* (“Likewise, applying for seed corn settlement funds may be in the ordinary course of business . . .”). Despite this finding, the district court did not infer that a general farming operation may have debt owed to it from distributors, or it may need to initiate litigation to address debt owed by a farm tenant. This type of conduct is precisely the type of customary conduct one would find in the commercial world generally, but more specifically with Iowa farms. *See* 54 C.J.S. *Limited Liability Companies* § 12, Westlaw (Nov. 2022) (defining “ordinary course of business” as “transactions that are part of

the normal or customary routine, even if only occasional, of the commercial world generally, or of businesses of the same kind, or of a particular business.”).

This is because the district court focused on Richard Hunter’s minority member status in Hunter Three Farms. *See* Order 6, App. 350. (“[I]nitiating a lawsuit against a minority member for the alleged misappropriation of those funds would require unanimity.”). Richard Hunter would contend that this is material for all the claims against him, including the conversion and unjust enrichment claims.

Claims against a specific member for breach of the member’s duties owed to the LLC may not always be within the ordinary course of business. That was the key factual distinction in the cases relied on by the district court to reach its decision. *See Vecchitto v. Vecchitto*, No. CV084008482, 2008 WL 4210784, at \*1, 4 (Conn. Super. Ct. Aug. 26, 2008) (suit against partner for breach of the partnership agreement was outside the scope of partnership’s ordinary business); *Jackson Enterprises v. Jackson*, No. FTCBV186070521S, 2018 WL 7822093, at \*1 (Conn. Super. Ct. July 25, 2018) (suit against partner for breach of the fiduciary duties owed to the partnership). Yet the district court’s ruling did not simply dismiss the claims related to Richard Hunter’s breach of his duties to Hunter Three Farms, LLC—the district court dismissed

the whole case. *See* Order 9, App. 353. At minimum, Hunter Three Farms' claims for conversion and unjust enrichment should have survived summary judgment.

This is because, once more, a blanket rule that any litigation involving a member of the LLC as a potential defendant requires unanimity of all members would yield absurd results. For further example, consider an LLC member who is the farm tenant subject to a lease agreement of an LLC which owns agricultural land. If the LLC does not have an operating agreement, is the LLC barred from terminating the farm tenancy absent unanimous agreement of all the members? Even if the member-tenant failed to abide by the terms of the lease? Or would the other members be forced to initiate a derivative action to evict the member-tenant? This interpretation substantially expands the universe of claims which would require derivative action.

There is a myriad of scenarios where the rule proposed by Richard Hunter—that an LLC's legal claims against a member of the LLC must always be brought by as a derivative action—is unworkable. A litigant should not be able to throw up procedural roadblocks to avoid liability simply because they are a minority member of an LLC, particularly when the subject matter of the litigation (i.e., debt collection) is within the ordinary scope of the LLC's business. Moreover, the conversion claim and unjust enrichment claims in this

case are as simple as they get—Richard Hunter took a check payable to the entity and deposited it for his exclusive use. Hunter Three Farms brought this suit to collect a debt which is owed to it; it should be permitted to proceed with this lawsuit.

### **CONCLUSION**

The disinterested members of Hunter Three Farms unanimously approved a lawsuit against Richard Hunter to recover settlement proceeds which the LLC is rightfully owed. The district court found that a derivative action was the only way Hunter Three Farms could proceed to recover against Richard Hunter for his misconduct. For the reasons stated herein, the district court was wrong to find Hunter Three Farms lacked standing because it failed to get Richard Hunter’s consent to file this lawsuit. Hunter Three Farms prays the Court reverse the district court’s grant of Appellee’s motion for summary judgment, and permit it to proceed with its claims against Richard Hunter.

### **REQUEST FOR ORAL ARGUMENT**

Hunter Three Farms, LLC requests this matter be heard in oral argument.

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE  
REQUIREMENTS AND TYPE-VOLUME LIMITATIONS**

The brief complies with the typeface requirements and type-volume limitations of Iowa R. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

This brief has been prepared in a proportionally spaced typeface using Times New Roman in font size 14 and contains 5,505 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1); OR

This brief has been prepared in a monospaced typeface using \_\_\_\_\_ in \_\_\_\_\_ and contains \_\_\_\_\_ lines of text, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(2).

Dated March 23, 2023.

/s/ Adam J. Babinat  
Adam J. Babinat AT0013359  
Redfern, Mason, Larsen & Moore, P.L.C.  
415 Clay Street, P.O. Box 627  
Cedar Falls, IA 50613  
Phone: (319) 277-6830  
Fax: (319) 277-3531  
Email: babinat@cflaw.com



## CERTIFICATE OF COSTS

I hereby certify that the actual cost of printing the foregoing Appellant's Final Brief was in the sum of \$0.00.

/s/ Adam J. Babinat

Adam J. Babinat AT0013359

Redfern, Mason, Larsen & Moore, P.L.C.

415 Clay Street, P.O. Box 627

Cedar Falls, IA 50613

Phone: (319) 277-6830

Fax: (319) 277-3531

Email: [babinat@cflaw.com](mailto:babinat@cflaw.com)

ATTORNEYS FOR PLAINTIFF-APPELLANT

## CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the Appellant's Final Brief was served on the 23rd day of March, 2023, electronically upon the clerk of the clerk of the Supreme Court pursuant to Iowa R. Civ. P. 1.442(2) and that all of the below parties in this case electronic filers.

Appellant/Defendant: Justin E. LaVan  
Benjamin K. Kenkel  
Bradshaw, Fowler, Proctor  
& Fairgrave, P.C.  
801 Grand Avenue, Ste. 3700  
Des Moines, IA 50309

/s/ Adam J. Babinat  
Adam J. Babinat AT0013359  
Redfern, Mason, Larsen & Moore, P.L.C.  
415 Clay Street, P.O. Box 627  
Cedar Falls, IA 50613  
Phone: (319) 277-6830  
Fax: (319) 277-3531  
Email: babinat@cflaw.com

ATTORNEYS FOR PLAINTIFF-APPELLANT