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LEGAL PROCESS #3



8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SACRAMENTO**

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

15 Plaintiff,

16 vs.

17 THE CALIFORNIA STATE GRANGE, a
18 California nonprofit corporation, and
19 ROBERT McFARLAND, JOHN
20 LUVAAS, GERALD CHERNOFF and
21 DAMIAN PARR,

22 Defendants.

) Case No.: 34-2012-00130439

) **DEFENDANTS' OPPOSITION TO EX**
) **PARTE APPLICATION FOR**
) **TEMPORARY RESTRAINING ORDER**
) **AND ORDER TO SHOW CAUSE RE**
) **PRELIMINARY INJUNCTION**

) Date: October 3, 2012

) Time: 9:00 a.m.

) Dept.: 53

) Judge: The Honorable David Brown

) Date Action Filed: 10/01/12

23 Defendants submit the following brief Opposition to Plaintiff's Ex Parte Application for
24 Temporary Restraining Order and Order to Show Cause re Preliminary Injunction.

25 **INTRODUCTION**

26 The Court should deny plaintiff's motion for a temporary restraining order ("TRO"). There
27 is no urgency suggested by plaintiff's papers or by the evidence offered in support thereof.
28 Additionally, by its request for a TRO, plaintiff seeks to alter the status quo, not to preserve it. This
is not a proper subject for a TRO, especially on such short notice. Finally, plaintiff has not
demonstrated, as is its burden, the probability of prevailing on the merits of its causes of action for
declaratory relief and injunctions.

- 1 -

OPPOSITION TO EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION

1 In the event that the Court is inclined to schedule a hearing on plaintiff's motion for a
2 preliminary injunction, defendants will submit a more comprehensive opposition at that time.

3 **ARGUMENT**

4 **A. THERE IS NO GOOD CAUSE FOR URGENT RELIEF.**

5 Plaintiff comes to this Court seeking *ex parte* relief without statutory notice, seeking a TRO
6 because of a contractual dispute between two separate non-profit corporations, one of them (plaintiff)
7 an out-of-state corporation apparently not even qualified to do business in California.¹ Plaintiff
8 asserts that if extraordinary relief is not granted, then California State Grange might enter into
9 unspecified contracts with unspecified persons within some unspecified timeframe. See Declaration
10 of Edward L. Luttrell at para. 27. Plaintiff further claims that there is a possibility of confusion that
11 would arise if California State Grange continues to operate, temporarily, while charges are pending
12 against Master McFarland. *Id.* Plaintiff does not explain why a "possibility" of confusion created by
13 its own actions against the California State Grange gives rise to the extraordinary action of this Court
14 to issue a mandatory TRO. Indeed, the only "irreparable harm" specifically identified by plaintiff in
15 the moving papers is that defendants have engaged and will continue to be represented by a law firm
16 in opposing the asserted authority of National Grange. *Id.* at para. 20. There is no good reason for
17 issuance of either a TRO or an order to show cause regarding a motion for preliminary injunction.
18 No defendant has appeared; the case is not yet at issue. Plaintiff should be required to serve a noticed
19 motion at the appropriate time if it seeks provisional relief prior to a trial on the merits.

20 **B. NO TRO SHOULD ISSUE AS PLAINTIFF SEEKS TO ALTER THE STATUS QUO.**

21 "A TRO, like a preliminary injunction, is by design to preserve the status quo pending the
22 evidentiary hearing to determine whether to issue a permanent injunction." *Scripps Health v. Marin*
23 (1999) 72 Cal. App. 4th 324, 334 (underlining added). "The *ex parte* hearing concerning a TRO is no
24 more than a review of the conflicting contentions to determine whether there is a sufficiency of
25 evidence to support the issuance of an interlocutory order *to keep the subject of litigation in status quo*
26 _____"

27 ¹ Defendants ask the court to take judicial notice that National Grange is not, according to the California Secretary of
28 State Website, authorized to do business in California.

1 pending a full hearing to determine whether the applicant is entitled to a preliminary injunction.”
2 *Landmark Holding Group, Inc. v. Superior Court (Cal. Bell Club)* (1987) 193 Cal. App. 3d 525, 527
3 (italics added).

4 Here, plaintiff seeks to *alter* the status quo before a full evidentiary hearing can be held to
5 determine whether any injunction is appropriate. Plaintiff’s motion papers were received on the
6 afternoon before the scheduled morning hearing, allowing defendants very little time to prepare for
7 this hearing. Under these circumstances it would not be appropriate to grant a TRO requiring
8 defendants to take affirmative steps to essentially shutter a California corporation at the insistence of
9 an out-of-state corporation without the ability for defendants to submit evidence and to fully present
10 their side of the story.

11 The California State Grange has operated in California since shortly after the Civil War.² It is
12 now a California non-profit mutual benefit corporation in good standing with the state of California.
13 As required by California law, its operations are governed by a board of directors elected by its
14 members. Plaintiff seeks to turn that all of that on its head and take over the operations of the
15 organization and seize its assets, all on less than 24 hours’ notice, over what is essentially a contract
16 dispute.

17 Plaintiff seeks extraordinary affirmative relief in the form of a turnover order; requiring
18 defendants to turn over keys, sensitive passwords, and other information necessary for plaintiff to
19 wrest complete control of California State Grange from its duly elected directors and duly appointed
20 officers and deliver them to an out-of-state entity not shown to be qualified to even do business in
21 California. Pending a determination on the merits of this dispute, including likely cross-claims by the
22 California State Grange, the status quo should remain; which means the California State Grange
23 should continue to exist in good standing and operate as a California Corporation. Moreover,
24 California State Grange’s status with National Grange should remain in good standing (the status quo)
25 at this time, at least until the court has the benefit of a full presentation of the evidence. The Court

26
27 ² California State Grange was “chartered” originally as an unincorporated association by National Grange on July 15,
28 1873. Plaintiff failed to include a copy of the Charter transcript in its TRO submissions.

1 should therefore deny the sought TRO.

2 **C. PLAINTIFF HAS NOT SHOWN A LIKELIHOOD OF PREVAILING ON THE MERITS.**

3 California law governs a California nonprofit mutual benefit corporation which exists, in
4 the first place, as a creature of California state law. California law will therefore govern the
5 management of the internal affairs of the corporation, and not the internal rules of an out of state
6 corporation such as National Grange.

7 Here, Plaintiff has no standing to contest the actions taken by California State Grange, nor
8 does Plaintiff have standing to remove a director or an officer of a California Corporation. Under
9 Corporations Code sections 7213 and 7223, officers and directors, respectively, may only be
10 removed by certain persons expressly identified by statute. See e.g. Corp Code §§ 7213 (a) and
11 (b) [officers] and 7223(a) and (b) [directors]. Under settled California law, the election and
12 removal of the officers of a corporation is the sole province of the board of directors. Corp Code §
13 7213(a),(b). Standing to file suit to remove a director is vested in a fellow director, the Attorney
14 General, or a prescribed number of the corporation's members. *Id.* at 7223(a),(b). National
15 Grange is not an officer, not a director, is not a member of California State Grange, and it is
16 certainly not the Attorney General. **Nothing in California State Grange's articles of**
17 **incorporation or bylaws alters this statutory framework.** Moreover, although Section 14.13 of
18 the California State Grange Bylaws permits suspension of the master and "officers", this section
19 fails to identify who or what may undertake that action.

20 As the affairs of this California corporation are governed by the board of directors, it would
21 be their sole province, not the province of National Grange, to remove an officer such as Master
22 McFarland. To the extent that any provision of the laws of the National Grange would purport to
23 give the authority to remove an officer, such a provision would be unenforceable under California
24 law as an improper delegation of the authority and discretion of the board of directors. Likewise,
25 to the extent that any new or amended provision of the laws of National Grange would be
26 construed as to be incorporated by reference as a bylaw of California State Grange, such bylaw
27 would be required to **first** be approved by a 2/3 vote of the members of California State Grange at
28 an annual meeting at which a quorum was present (California State Grange Bylaws §26.1). In

1 sum, National Grange has no standing to enforce any matter of California State Grange's corporate
2 governance.

3 In addition, Plaintiff's reliance on Corp. Code § 5132 is misplaced. As noted, California State
4 Grange is a nonprofit *mutual benefit* corporation. It has members and its purposes are focused on
5 benefits for its members rather than the public at large. Consequently, it is not a nonprofit *public*
6 benefit corporation. Citation to the nonprofit public benefit corporation law (Corp. Code §§ 5110-
7 6910), as set forth in plaintiff's application throughout page 13, is therefore inapposite.

8 Finally, the articles of incorporation of California State Grange call for only five (5)
9 directors. [See the attached Exhibit A, which is a true and correct copy of the Articles of
10 Incorporation for California State Grange; once again, plaintiff failed to also include this important
11 document in its TRO submission]. The "Executive Committee" of California State Grange is
12 comprised of these 5 directors, plus 2 *officers*, the Master (McFarland) and the Overseer
13 (Stefenoni). Again, the affairs of a California corporation are governed by the board of directors,
14 not the officers. The votes referenced in plaintiff's Application all were made by three (3)
15 directors of California State Grange, which constitutes a majority of the five authorized directors.
16 Thus, these actions were duly authorized by the Corporation, contrary to plaintiff's suggestion to
17 the contrary (i.e. in paragraph 18 through 20 of Luttrell's declaration).

18 CONCLUSION

19 For the foregoing reasons, plaintiff's temporary restraining order request should be denied. If
20 the court is inclined to consider the merits of this motion, we respectfully submit that it should be done
21 in connection with a motion for preliminary injunction with a fair opportunity for defendants to submit
22 evidence and briefing.

23 Dated: October 3, 2012

BOUTIN JONES INC.

24
25 By:



Robert D. Swanson
Attorney for Defendants

Exhibit A

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RECEIVED FROM PAYMENT OF
MINIMUM FRANCHISE TAX

10-7-46 By telephone

FILED

In the office of the Secretary of State
of the State of California

OCT 7 - 1946

ARTICLES OF INCORPORATION

DANIEL J. JORDAN, Secretary of the

-OF-

By

Notarially attested

210454

"CALIFORNIA STATE GRANGE."

WITNESSES

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned, GEORGE SEHLMAYER, OKLIA M. HARDING, HARRY BARNES, W. L. SMITH and MERLE MENSINGER, have this day voluntarily associated ourselves together for the purpose of forming a non profit corporation under the laws of the State of California.

AND WE DO HEREBY CERTIFY:

1. That the name of this corporation is:

"CALIFORNIA STATE GRANGE."

2. That the purposes for which this corporation is formed are the following:

(a) To incorporate and take over the existing unincorporated association known as "California State Grange."

(b) To purchase, hold, lease, grant real and personal property, and have power to make contracts, sue and be sued, and otherwise acquire, sell, convey, transfer, lease to others, and otherwise dispose of, mortgage or otherwise encumber, real or personal property.

(c) To develop a better and higher manhood and womanhood among the members; to enhance the comforts and attractions of the homes of the members, and to strengthen the attachment of the members to their pursuits; to foster mutual understanding and cooperation; to maintain inviolate our laws and to emulate each other in labor; to reduce the expenses, both individual and corporate; to buy less and produce more, in order to make farms self-sustaining; to diversify the crops of

1.

1 members and to crop no more than the members can cultivate;
2 to condense the weight of the members' exports, selling less
3 in the bushel and more on hoof and in fleece; less in lint,
4 and more in warp and woof; to systematize the work of members
5 and calculate intelligently on probabilities; to discountenance
6 the credit system, the mortgage system, the fashion system, and
7 every other system tending to prodigality and bankruptcy.

8 (d) To meet together, talk together, work together,
9 buy together, sell together, and in general act together for
10 the mutual protection and advancement of members, as occasion
11 may require; to avoid litigation as much as possible by arbit-
12 ration in the Grange; to strive to secure entire harmony, good-
13 will, vital brotherhood among its members and to make the Grange
14 perpetual; to suppress personal, local, sectional and national
15 prejudices, all unhealthy rivalry and selfish ambition.

16 (e) To bring producers, consumers, farmers and manufac-
17 turers into the most direct and friendly relations possible;
18 to dispense with a surplus of middlemen; to work for the bene-
19 fit of the producer and consumer, and for all other interests
20 that tend to bring these two parties into speedy and economical
21 contact.

22 (f) To advocate for every State the increase in every
23 practicable way of all facilities for transporting cheaply to
24 the seaboard, or between home producers and consumers, all the
25 productions of our country; to open out the channels in nature's
26 great arteries, that the life-blood of commerce may flow freely.

27 (g) To oppose such spirit and management of any cor-
28 poration or enterprise as tends to oppress the people and rob
29 them of their just profits; to advocate the removal of antago-
30 nism between capital and labor by common consent, and by an
31 enlightened statesmanship worthy of the twentieth century.
32

1 (h) To advance the cause of education among its
2 members and their children, by all just means within its
3 power; to advocate for our agricultural and industrial
4 colleges, that practical agriculture, domestic science, and
5 all the arts which adorn the home, be taught in their courses
6 of study; and to do all things formerly done by the State
7 Grange, a voluntary association.

8 3. This corporation from time to time may do any one
9 or more of the acts and things, or carry out any one or more
10 of the purposes herein set forth, and may transact business
11 in the State of California, in other States, in the District
12 of Columbia, in the Districts, Dependencies and Colonies of
13 the United States, and in Foreign Countries.

14 4. That the principal office for the transaction of
15 the business of this corporation is to be located in the
16 County of Sacramento, State of California.

17 5. That all members of the California State Grange, a
18 voluntary association, at the date hereof, shall be members
19 of the CALIFORNIA STATE GRANGE, a Corporation.

20 6. That this corporation does not contemplate the distri-
21 bution of gains, profits or dividends to the members thereof.

22 7. That the organization of the CALIFORNIA STATE GRANGES,
23 a corporation, shall be and remain as now existing, until
24 otherwise changed or modified according to the rules and reg-
25 ulations of said Order.

26 8. That the Constitution of the CALIFORNIA STATE GRANGE,
27 a voluntary association, shall be and remain the Constitution
28 of this corporation, until otherwise amended or altered in
29 the mode provided by said instrument.

30 9. That the present By-Laws of the CALIFORNIA STATE GRANGE,
31 a voluntary association, shall constitute the By-Laws of the
32

1 corporation hereby created, subject to be altered and amended
2 as provided in the same. That any amendments made to said
3 Constitution and By-Laws shall conform to the Constitution
4 of the United States and of this State.

5 10. That the CALIFORNIA STATE GRANGE may hold its
6 annual and call meetings in any County in the State of Cali-
7 fornia, and the proceedings of such meetings shall have the
8 same force and effect in this State, as if said meetings
9 were held and proceedings had in the County of Sacramento.

10 11. That the authorized number and qualifications of
11 members of this corporation, the property, voting and other
12 rights and privileges of membership, and the liability of
13 each to dues or assessments, and the method of collection
14 thereof, shall be set forth in the By-Laws of this Corpora-
15 tion.

16 12. That there shall be five (5) directors; that the
17 names and addresses of the persons who are appointed to
18 act as the first directors are as follows:

19 NAME	ADDRESS
20 George Sehlmeier	2900 Regina Way, Sacramento, California;
21 Celia M. Harding	Route 1 Box 112, Fowler, California;
22 Harry Barnes	53 E. Santa Clara Avenue, San Jose, 23 California;
24 W. L. Smith	Route 1 Box 25, Dutchwillow, California;
25 Merle Mensinger	Escalon, California.

26
27 IN WITNESS WHEREOF, we have hereunto set our hands
28 and seals this 20th day of September, 1946.

29 W. L. Smith George Sehlmeier
30 (W. L. Smith) (George Sehlmeier)
31 Merle Mensinger Celia M. Harding
32 (Merle Mensinger) (Celia M. Harding)
Harry Barnes
(Harry Barnes)

1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF SACRAMENTO)

4 on this 20th day of September, A. D., 1946, before
5 me, CHARLES O. BUSICK, a Notary Public in and for the County
6 of Sacramento, State of California, personally appeared
7 GEORGE SEHLMAYER, CELIA M. HARDING, HARRY BARNES, W. L. SMITH
8 and MERLE MENSINGER, known to me to be the persons named as
9 directors in the within instrument, and whose names are sub-
10 scribed thereto, and severally acknowledged to me that they
11 executed the same.

12 IN WITNESS WHEREOF, I have hereunto set my hand and
13 affixed my official seal at my office in the City of Sacra-
14 mento, County of Sacramento, State of California, the day
15 and year in this certificate first above written.

16 *Charles O. Busick*
17 Notary Public in and for the County
18 of Sacramento, State of California.

19 On motion duly seconded and carried, the Secretary
20 was directed to file the Articles of Incorporation in the
21 Office of the Secretary of State of the State of California,
22 and also file a certified copy of said Articles of Incorporation,
23 duly certified to by said Secretary of State, in the
24 Office of the County Clerk of the County of Sacramento, State
25 of California. There being no further business the meeting
26 adjourned.

27 *Celia M. Harding*
28 Secretary of Preliminary Meeting of Organizers
29 of California State Grange, Incorporated.
30

AFFIDAVIT

STATE OF CALIFORNIA)
County of Sacramento (SS:

On this 1st day of October 1946,
before me, CHARLES O. BUSICK, a Notary Public in
and for the said County and State, residing therein, duly commis-
sioned and sworn, personally appeared GEORGE SEHLMAYER
and CELIA M. HARDING, who, being sworn, each for himself,
deposes and says: That the said GEORGE SEHLMAYER
is the Master of California State Grange
and that the said CELIA M. HARDING is the Secretary
of California State Grange. That
California State Grange is an unincorporated
association and that said association has duly authorized its in-
corporation. That George Sehlmeier and
Celia M. Harding have executed these articles
of incorporation in their official capacity and by authority of
such association.

George Sehlmeier
George Sehlmeier
Celia M. Harding
Celia M. Harding

Subscribed and sworn to before me this 1st day of
October, 1946.

(Seal)

Charles O. Busick
Notary Public in and for said
County and State

CHAS. J. MCCOLGAN
COMMISSIONER

STATE OF CALIFORNIA

OFFICE OF

Franchise Tax Commissioner

SACRAMENTO 14

October 7, 1946

California State Grange
c/o Busiek and Busiek
601 Bank of America Building
Sacramento, California

Gentlemen:

RE: Exemption From Franchise Tax

The claim submitted by your organization for exemption from taxation under the Bank and Corporation Franchise Tax Act is approved. Annual franchise tax returns need not be filed unless the character of the organization, its purposes, methods of operation, sources of income, or methods of distribution of its income, be changed. Changes in any of these particulars must be reported promptly to this department.

Very truly yours,

CHAS. J. MCCOLGAN
Franchise Tax Commissioner

By

William A. Hart
WILLIAM A. HART
Assistant Tax Counsel

MAH:ns

cc - Sec. of State
cc - Russell