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LEGAL PROCESS #3

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

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

14 Plaintiff,

15 vs.

16 THE CALIFORNIA STATE GRANGE, a)
California nonprofit corporation, and)
17 ROBERT McFARLAND, JOHN)
LUVAS, GERALD CHERNOFF and)
18 DAMIAN PARR,)

19 Defendants.
20

Case No.: 34-2012-00130439

DEFENDANTS' OPPOSITION TO
MOTION FOR PRELIMINARY
INJUNCTION

Date: October 17, 2012

Time: 1:00 p.m.

Dept.: 53

Date Action Filed: 10/01/12

21 Defendants, The California State Grange, John Luvaas, Gerald Chernoff, and Damian Parr,
22 ("Defendants") submit the following Opposition to Plaintiff's Motion for Preliminary Injunction.
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INTRODUCTION

The Court denied plaintiff's motion for a temporary restraining order ("TRO"). Upon doing so, the TRO application was converted into a motion for a preliminary injunction. A preliminary injunction should not issue in this case, for the following reasons. First, plaintiff has not demonstrated, as was its burden, the probability of prevailing on the merits on its two causes of action in the complaint for declaratory judgment and injunction. Second, plaintiff has not demonstrated, by admissible evidence, the existence of sufficient interim harm if the injunction is denied. Third, by its request for a preliminary injunction, plaintiff seeks to alter the status quo, not to preserve it. This is not a proper subject for a preliminary injunction. Finally, plaintiff seeks affirmative/mandatory relief in the form of a turnover order which is a highly disfavored remedy on a preliminary injunction.

Plaintiff seeks precisely three (3) forms of relief in the motion for preliminary injunction: (1) An order preliminarily restraining all named defendants from executing any contracts; (2) An order preliminarily restraining all named defendants from "undertaking any official actions at or from the direction of the California State Grange Executive Committee;" and (3) A mandatory injunction in the form of a turnover order requiring all named defendants to give to plaintiff all keys, building, and computer passwords, as well as "all other information necessary for the National Grange to operate the California State Grange." Plaintiff seeks no "lesser included" measures other than what it expressly requested in the notice of motion and in the moving papers. As such, if plaintiff cannot fully meet the elements of a preliminary injunction as to any of the three grounds expressed, the preliminary injunction motion must be denied in its entirety. See CCP § 1010; see also Weil & Brown, CAL. PRAC. GUIDE: CIV. PRO. BEFORE TRIAL (Rutter 2012) §9:38; p. 9(1)-23 ("The court cannot grant different relief, or relief on different grounds, than stated in the notice of motion").

The California State Grange is an autonomous California nonprofit mutual benefit corporation. Plaintiff too is an independent non-profit corporation, but is not incorporated in or

1 authorized to do business in California.¹ Plaintiff is a nonprofit corporation organized under the
2 laws of the District of Columbia. At the heart of plaintiff's motion for a preliminary injunction is a
3 truly remarkable proposition: that an out-of-state nonprofit corporation may take over by judicial
4 compulsion, on an "interim" basis, the entire corporate affairs of a California nonprofit corporation
5 such that the California corporation may no longer function on its own and, moreover, must
6 convey its property and assets to the out-of-state entity. The law does not support such a
7 proposition.

8 This is not, as plaintiff would have the court believe, a simple dispute between a parent and
9 a division (see Motion at page 5, line 2). These are independent corporate entities with complete
10 diversity between them who are bound together only insofar as the contracts that exist between
11 them allow. As will be shown here, plaintiff does not have the authority it claims, whether under
12 its own internal governing documents or as a matter of California state law. For these and other
13 reasons, the motion for preliminary injunction is misguided and the relief that plaintiff seeks is and
14 remains "unwarranted, unmerited and without any authority."

15 ARGUMENT

16 I. Standard of review

17 "In deciding whether to issue a preliminary injunction, a trial court weighs two interrelated
18 factors: the likelihood the moving party ultimately will prevail on the merits, and the relative
19 interim harm to the parties from the issuance or non-issuance of the injunction." *Hunt v. Sup. Ct.*
20 *(Guimbellot)* (1999) 21 Cal.4th 984. The applicant must satisfy both factors in order to obtain the
21 injunction. *Abrams v. St. John's Hospital & Health Center* (1994) 25 Cal.App.4th 628, 636. In this
22 case, both factors weigh against plaintiff, and in favor of Defendants.

23
24 ¹ Defendants ask the court to take judicial notice that National Grange is not, according to the California Secretary of
25 State Website, authorized to do business in California. Moreover, Corporations Code section 2105 requires foreign
26 corporations with the specified minimum contacts to obtain a certificate of qualification to transact business in
27 California by, among other things, filing a signed statement identifying the foreign corporation's name and "state or
28 place of incorporation or organization" (§ 2105, subd. (a)(1)), as well as a certificate signed by an authorized public
official of the state or place of incorporation confirming the foreign corporation is a corporation in good standing in
that state. (§ 2105, subd. (b).). There is no evidence before the court that this has been done.

1 **II. Plaintiff is not likely to succeed on the merits of any claim for injunctive relief.**

2 To demonstrate its entitlement to a preliminary injunction, plaintiff must show that it is likely
3 to prevail on a claim for injunctive relief. “It is well settled that an injunction should not issue when
4 the party seeking the injunction will not succeed on the merits, even though its issuance might
5 prevent irreparable harm, because ‘there is no justification in delaying that harm where, although
6 irreparable, it is also inevitable. [Citation.]’” *14859 Moorpark Homeowner's Ass'n v. VRT Corp.*
7 (1998), 63 Cal.App.4th 1396, 1408, quoting *Choice-In-Education League v. L.A. Unif. School Dist.*,
8 (1993) 17 Cal.App.4th 415,422. Plaintiff has not demonstrated a likelihood of prevailing on either
9 cause of action in the complaint, and cannot do so. Neither of its claims has any merit.

10 *A. Plaintiff's Declaratory Judgment and Injunction Claims Lack Merit.*

11 Plaintiff's First and Second Causes of Action are for declaratory judgment and injunction.
12 Both causes of action are based on the same underlying set of facts and both causes of action seek
13 essentially the same remedies, which include a court order recognizing and giving effect to plaintiff's
14 purported right and authority to “suspend the Charter”² of California State Grange and to suspend
15 Master McFarland from acting as Master pending the adjudication of the charges filed against him by
16 plaintiff. No other causes of action are alleged in the complaint.

17 Plaintiff's causes of action rely on the interpretation of plaintiff's bylaws and articles of
18 incorporation, the laws of the National Grange, California State Grange's bylaws and articles of
19 incorporation, and California law. Plaintiff claims that California State Grange is a “division” of
20 National Grange. However, a “division” has no legal definition under California law. That term is
21 meaningless in the context of the present dispute. It *might* be different if California State Grange was
22 a legal subsidiary of National Grange or if the National Grange were a member of California State
23 Grange, but it is neither, and there is no evidence in the plaintiff's motion to the contrary. This is a
24 dispute between two sovereign corporations, one domestic and one foreign. If California State
25

26 ² California State Grange was granted a “Charter” originally as an unincorporated association by National Grange on
27 July 15, 1873. Plaintiff failed to include a copy of the Charter or a transcript thereof in its motion for preliminary
28 injunction. True and correct copies of a current photograph of the Charter and the text of the Charter are attached to
the accompanying Declaration of Robert McFarland as Exhibits A and B, respectively.

1 Grange actually ceded any authority regarding its own governance and affairs to a foreign entity, that
2 would be reflected somewhere in the California State Grange's governing documents. It is not there.
3 Although not styled as such in the complaint, this is essentially in the nature of a contract dispute.

4 1. Plaintiff lacks standing to bring the claims it alleges.

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

9 Plaintiff simply has no standing to contest the actions taken by California State Grange, nor
10 does Plaintiff have standing to remove a director or an officer of a California Corporation. Under
11 Corporations Code sections 7213 and 7223, officers and directors, respectively, may only be
12 removed by certain persons expressly identified by statute. See e.g. Corp Code §§ 7213 (a) and
13 (b) [officers] and 7223(a) and (b) [directors]. Under settled California law, the election and
14 removal of the officers of a corporation is the sole province of the board of directors. Corp Code §
15 7213(a), (b). Standing to file suit to remove a director is vested in a fellow director, the Attorney
16 General, or a prescribed number of the corporation's members. *Id.* at 7223(a), (b). National
17 Grange is not an officer, not a director, is not a member of California State Grange, and it is
18 certainly not the Attorney General. Nothing in California State Grange's articles of incorporation
19 or bylaws alters this statutory framework. Moreover, although Section 14.13 of the California
20 State Grange Bylaws permits suspension of the master and "officers", this section fails to identify
21 who or what may undertake that action. Of paramount import here, nothing in either entity's
22 governing documents gives the right to National Grange to seize the assets and to control the
23 affairs of California State Grange upon the suspension of either the Master or the Charter.³

24 As the affairs of this California corporation are governed by its board of directors (Corp.
25 Code § 7210), it would be their sole province, not the province of National Grange, to remove an
26 officer such as Master McFarland. To the extent that any provision of the laws of the National
27

28 ³ The motion for preliminary injunction makes clear that plaintiff is not seeking to revoke the Charter. Motion at 13:7-9.

1 Grange would purport to give the authority to remove an officer, such a provision would be
2 unenforceable under California law as an improper delegation of the authority and discretion of the
3 board of directors. Corp. Code §§ 7210; 7213. But even still, none of the National Grange laws
4 are incorporated by reference and/or made a part of the organizational documents (the Bylaws and
5 the Articles of Incorporation) that govern California State Grange's internal affairs. Nor are the
6 bylaws of National Grange to be considered the bylaws of California State Grange.

7 Likewise, to the extent that any new or amended provision of the laws of National Grange
8 would be construed as to be incorporated by reference as a bylaw of California State Grange, such
9 bylaw would be required to first be approved by a 2/3 vote of the members of California State
10 Grange at an annual meeting at which a quorum was present (California State Grange Bylaws
11 §26.1). There is no evidence this was done with respect to any provision at the National Grange
12 level that would purport to grant suspension or seizure rights over California State Grange.

13 Nor does National Grange have the authority to suspend or dissolve a California
14 corporation. Whether a corporation has been terminated or suspended is determined by the local
15 law of the state of incorporation. *Robinson v. SSW, Inc.* (2012) 2012 WL 4235441 at p. 9
16 (Cal.App. 1 Dist.). We therefore look to California law, not the laws of National Grange or the
17 laws of any other state, to determine the rights and duties of a suspended or dissolved California
18 corporation. *Id.* California law does not allow a third party foreign corporation to unilaterally
19 suspend a California corporation or prevent its officers and directors from acting on behalf of the
20 California entity.

21 In sum, National Grange has no standing to enforce any matter of California State
22 Grange's corporate governance.

23 2. An injunction is not proper because this is essentially a contractual dispute.

24 To obtain injunctive relief for an alleged breach of contract, plaintiff must show that the
25 provision alleged to be breached is capable of enforcement by specific performance. Cal. Civil Code
26 § 3423(e) ("An injunction may not be granted ... [t]o prevent the breach of a contract the
27 performance of which would not be specifically enforced."); Cal. Civ. Proc. Code § 526(b)(5) (same).
28 Plaintiff cannot meet this burden.

1 “An agreement, the terms of which are not sufficiently certain to make the precise act which is
2 to be done clearly ascertainable” “cannot be specifically enforced.” Cal. Civ. Proc. Code § 3390(5).
3 As our Supreme Court has long held, “it is settled that a greater amount or degree of certainty is
4 required in the terms of an agreement which is to be specifically executed in equity than is necessary
5 in a contract which is the basis of an action at law for damages.” *Pascoe v. Morrison* (1933) 219 Cal.
6 54, 58. Plaintiff has not shown, with a high degree of certainty, that it is entitled to any of the three
7 grounds for injunction sought in its motion for preliminary injunction.

8 3. Plaintiff relies on inapplicable sections from the Corporations Code.

9 Plaintiff’s reliance on Corp. Code § 5132 (applicable only to nonprofit public benefit
10 corporations) is misplaced. As noted, California State Grange is a nonprofit *mutual benefit*
11 corporation. It has members and its purposes are focused on benefits for its members rather than the
12 public at large. Consequently, it is not a nonprofit *public* benefit corporation. Citation to the
13 nonprofit public benefit corporation law (Corp. Code §§ 5110-6910), as set forth in plaintiff’s
14 application throughout page 13, is therefore inapposite.

15 Nor is Corp. Code § 7132 controlling in this situation. Section 7132 is expressly made not
16 applicable to nonprofit mutual benefit corporations by Corp. Code § 9913(b), “unless and until an
17 amendment of the articles of incorporation is filed stating that the corporation elects to be governed
18 by all of the provisions of the new law not otherwise applicable to it under this part.” Corp. Code §
19 9913(b). There is no evidence in plaintiff’s moving papers that California State Grange ever so
20 amended its articles.

21 4. Defendants’ actions were proper and authorized by California State
22 Grange’s governing body – its Board of Directors.

23 The articles of incorporation of California State Grange call for only five (5) directors. The
24 “Executive Committee” of California State Grange is comprised of these 5 directors, plus 2
25 *officers*, the Master (McFarland) and the Overseer (Stefenoni). Again, the affairs of a California
26 corporation are governed by the board of directors, not the officers. The votes referenced in
27 plaintiff’s Application all were made by three (3) directors of California State Grange, which
28 constitutes a majority and quorum of the five authorized directors. Thus, these actions were duly

1 authorized by the Corporation, notwithstanding plaintiff's suggestion to the contrary (i.e. in
2 paragraph 18 through 20 of Luttrell's declaration).

3 5. The cases cited in plaintiff's motion do not support the requested relief.

4 Plaintiff cites two cases in support of its claimed right to obtain a court ordered injunction.
5 Neither is persuasive on this point, and both are distinguishable as set for below (and also because
6 neither case deals with injunctions).

7 The first case is *Hard v. California State Employees Assn* (2003) 112 Cal.App.4th 1343. In
8 *Hard*, the Civil Service Division ("CSD") was comprised of *constituent members* of the California
9 State Employees Association ("CSEA"), a California corporation. Both CSD and CSEA were a
10 part of the same legal entity. CSEA was an employee organization comprised of four distinct
11 "classes," one of whom was the CSD. CSEA was also the exclusive representative for the active
12 employees in the civil service in their labor relations with the Governor.

13 CSEA had a duly adopted bylaw provision which contemplated the separation and
14 subsequent affiliation of a class like CSD through its incorporation as a separate, independent
15 corporation. This means that CSD would, after incorporation, be legally independent of CSEA,
16 but nonetheless affiliated through a charter and, more importantly, a service contract. The lawsuit
17 was brought by members of CSD against CSEA because CSEA refused to recognize CSD's right
18 to independently organize, which right was clearly set forth in CSEA's own bylaws.

19 The present case is quite different. Here we have two already independent legal entities,
20 with no common ownership. These two entities might be an "affiliate" through a "charter" or
21 contract. However, National Grange is not a member of California State Grange. Furthermore,
22 *Hard* was an instance where members of a California corporation sought to compel a foreign
23 corporation to adhere to the California corporation's bylaws, not those of a foreign corporation.
24 And absolutely nothing in *Hard* gives National Grange support for exerting control over the
25 internal corporate governance of a California corporation.

26 Furthermore, *Hard* does not stand for the proposition advanced by plaintiff (at Page 11,
27 line 23 of the Motion) that "California Courts will enforce the provisions of a private
28 organization's bylaws as long as the ruling to be enforced is based on a reasonable interpretation

1 of the applicable bylaws.” To the contrary, *Hard* makes clear that California courts are to show
2 restraint, and *only* get involved in a review of a private organization’s interpretation of a
3 straightforward bylaw when all three factors of a tripartite test are satisfied. *Hard*, 112
4 Cal.App.4th at 1347. Plaintiff actually cites the correct rule later in its Motion on page 12, starting
5 at line 21, but nowhere in the Motion does plaintiff engage in the necessary analysis to determine
6 whether the court should act in the first place.

7 Plaintiff’s reliance on *California Dental Ass’n v. American Dental Ass’n* (1979) 23 Cal.3d
8 346, is similarly misplaced. In this case, the California Dental Association (“CDA”) sought an
9 order compelling the American Dental Association (“ADA”) to comply with the ADA’s own
10 bylaws which gave certain authority to the CDA to discipline CDA’s member dentists. The ADA
11 was a nonprofit Illinois corporation. The CDA was a “constituent society of the ADA.” It is not
12 clear from the opinion whether the CDA was a separate or even a California corporation; nothing
13 is said about the CDA’s status in this regard, one way or the other. *CDA*, 23 Cal.3d at 350. The
14 CDA had adopted a higher standard for discipline than the ADA, and the ADA rules expressly
15 contemplated that CDA have the ability, autonomy, and authority to adopt these higher standards.
16 The CDA sued seeking to compel the ADA to apply *its own* bylaws correctly for the resolution of
17 a CDA member disciplinary procedure.

18 The question before the court was whether to intervene in a private organization’s private
19 dispute. The court ultimately decided to intervene, but not before adopting a balance test to guide
20 future courts in making similar determinations. *CDA* is factually and procedurally unique as
21 compared to the present dispute. *CDA* did not involve the construction and interplay between two
22 separate corporations’ bylaws, as is the case at present. And nothing in *CDA* purported to give
23 rights to a foreign corporation to usurp California law regarding the governance and control of a
24 separate California corporation.

25 In sum, neither case cited in the moving papers is helpful to this court in deciding whether
26 to issue the injunction requested by plaintiff.

27 *B. The Equities Do Not Favor Plaintiff.*

28 Plaintiff seeks an injunction requiring California State Grange to take action and/or refrain

1 from taking other actions. However, the authority to govern the actions and conduct of a California
2 corporation is vested solely in the board of directors. Corp. Code § 7210. This Court should not enter
3 the requested injunction against Defendants because it would be contrary to California law to allow
4 an outside entity, not authorized to do business in California, to effectively take control of the
5 management, assets, and property of a California corporation. Defendants should not be made to
6 implement an injunction that would have the effect of violating California law and which would result
7 in ultra vires acts all of which would be patently inequitable towards Defendants. The Court should
8 deny the requested injunction for this additional reason.

9 **III. The Harm to Defendants Outweighs any Potential Harm to Plaintiff.**

10 The second factor to be weighed by a court in making its determination on a motion for
11 preliminary injunction is the comparative harm to the parties of either ruling, but only when the
12 court has first found that a plaintiff is likely to prevail on the merits. *Hunt, supra*, 21 Cal.4th at 999.
13 Here, because there is no likelihood of plaintiff's success on the merits, the Court need not proceed
14 to consider this factor - because it cannot justify delaying harm which is inevitable, regardless of its
15 magnitude. *14859 Moorpark Homeowner's Ass'n, supra*, 63 Cal.App.4th at 1408; *Choice-In-*
16 *Education League, supra*, 17 Cal.App.4th at p. 422.

17 If the Court nonetheless analyzes this factor, its determination "involves consideration of
18 such things as the inadequacy of other remedies, the degree of irreparable harm, and the necessity
19 of preserving the status quo." *Abrams, supra*, 25 Cal.App.4th at 636. "In the last analysis the trial
20 court must determine which party is the more likely to be injured by the exercise of its discretion
21 [citation] and it must then be exercised in favor of that party [citation]." *Jessen v. Keystone*
22 *Savings & Loan Assn.* (1983) 142 Cal.App.3d 454, 458-459 [denying injunction to restrain
23 foreclosure of investment property], quoting *Family Record Plan, Inc. v. Mitchell* (1959) 172
24 Cal.App.2d 235, 242. As evidenced above, that determination weighs in favor of Defendants, and
25 against plaintiff.

1 A. *The degree of interim harm to plaintiff is marginal compared to the harm to Defendants in*
2 *granting the requested injunction.*

3 Plaintiff asserts that if injunctive relief is not granted, then California State Grange *might* enter
4 into unspecified contracts with unspecified persons within some unspecified timeframe. *See*
5 Declaration of Edward L. Luttrell at para. 27. Plaintiff further claims that there is a possibility of
6 confusion that would arise if California State Grange continues to operate, temporarily, while charges
7 are pending against Master McFarland. *Id.* Plaintiff does not explain why a “possibility” of
8 confusion *created by its own actions* against California State Grange gives rise to the level of
9 necessitating a provisional remedy in the form of an injunction. Indeed, the only “interim harm” that
10 is specifically identified by plaintiff in the moving papers (as opposed to categorically speculated
11 about) is that defendants have engaged and will continue to be represented by a law firm in opposing
12 the asserted authority of National Grange. *Id.* at para. 20. A preliminary injunction should not issue
13 on this thin evidentiary record.

14 In contrast, plaintiff seeks to “operate” California State Grange, and force the turnover of
15 everything necessary to do so. *See* Motion at 1:25 through 2:2. This means that National Grange will
16 have complete control of all of the assets, equipment, and property of California State Grange in the
17 event the injunction is granted. These assets are valued in excess of five million dollars
18 (\$5,000,000.00). *See* Declaration of Robert McFarland, ¶ 3. And nothing in the documents attached
19 to the motion for preliminary injunction purport to give the right to National Grange to take over
20 complete control of California State Grange upon the suspension of the Charter. Plaintiff does not
21 even attempt to connect the dots as to why “suspension of a charter” necessarily equates to handing
22 complete control of a California corporation to National Grange.

23 Nor does plaintiff state for how long the injunction would need to be in place. According to
24 plaintiff, the “suspension” is only for so long as charges are pending against Master McFarland. *See*
25 Motion at page 10, line 19-23. Will the charges be adjudicated next week, next month, or next year?
26 Defendants and the Court are left to speculate. Overbroad, vague, or generally phrased injunctions
27 are to be avoided. Weil & Brown, CAL. PRAC. GUIDE: CIV. PRO. BEFORE TRIAL (Rutter
28 2012) §9:544; p. 9(II)-16.

1 The cumulative effect is that the operations of California State Grange will be paralyzed and
2 left to be run by outside forces not authorized under California law to do so. This will cause immense
3 harm to California State Grange. If the injunction is granted, National Grange would be free to loot
4 California State Grange of its assets without apparent recourse for the California corporation.
5 Compared with the relative absence of harm that National Grange will suffer, this is yet another
6 reason for which to deny the requested injunction.

7 *B. Plaintiff seeks to alter the status quo; no preliminary injunction should therefore issue.*

8 The avowed purpose of a preliminary injunction is to preserve the status quo pending a trial
9 on the merits. *Continental Baking Co. V. Katz* (1968) 68 Cal.2d. 212, 528; *Scripps Health v. Marin*
10 (1999) 72 Cal. App. 4th 324, 334. Here, plaintiff seeks to significantly *alter* the status quo. The
11 California State Grange has operated in California since shortly after the Civil War. See Charter of
12 California State Grange. It is now a California non-profit mutual benefit corporation in good
13 standing with the state of California. As required by California law, its operations are governed by a
14 board of directors elected by its members. Plaintiff seeks to turn that all of that on its head and take
15 over the operations of the organization and seize its assets, over what is essentially a contract dispute.

16 Plaintiff also seeks extraordinary mandatory relief in the form of a turnover order, requiring
17 defendants to turn over keys, sensitive passwords, and other information necessary for plaintiff to
18 wrest complete control of California State Grange from its duly elected directors and duly appointed
19 officers and deliver them to an out-of-state entity not shown to be qualified to even do business in
20 California. “[T]he general rule is that an injunction is prohibitory if it requires a person to refrain
21 from a particular act and mandatory if it compels performance of an affirmative act that changes
22 the position of the parties.” *Davenport v. Blue Cross of Calif.*, 52 Cal.App.4th. 435, 447-448
23 (1997). “The granting of a mandatory injunction pending trial is not permitted except in extreme
24 cases where the right thereto is clearly established.” *Teachers Ins. & Annuity Ass’n v. Furlotti*, 70
25 Cal.App.4th 1487, 1493 (1999) (internal quotes omitted). Plaintiff has failed to demonstrate the
26 right at all, let alone clearly, to support the mandatory injunction requested.

27 Pending a determination on the merits of this dispute, including likely cross-claims by the
28 California State Grange, the status quo should remain; which means the California State Grange

1 should continue to exist in good standing and operate as a California Corporation. Moreover,
2 California State Grange's status with National Grange should remain in good standing (the status quo)
3 at this time, at least until the court has the benefit of a full presentation of the evidence at trial. The
4 Court should therefore deny the requested preliminary injunction.

5 **IV. If an injunction is issued, plaintiff should be required to post a bond**
6 **commensurate with Defendants' likely interim monetary damages.**

7 In the event the Court is inclined to grant plaintiff's Motion and issue a preliminary injunction,
8 the Court must require plaintiff to post an undertaking in an amount sufficient to cover Defendants'
9 damages if the Court ultimately decides that plaintiff was not entitled to an injunction. Civ. Proc.
10 Code § 529(a).

11 Given the value of California State Grange's assets at \$5,327,155.92 (See Declaration of
12 Robert McFarland at para. 3), and taking into account the economic harm surely to befall
13 Defendants should an injunction issue (i.e. California State Grange will effectively have to cease
14 doing business), plaintiff should be required to post a substantial bond in an amount of not less than
15 six million dollars (\$6,000,000).

16 **CONCLUSION**

17 For the foregoing reasons, plaintiff's request for a preliminary injunction order should be
18 denied.

19 Dated: October 10, 2012

BOUTIN JONES INC.

21 By: _____

22 Robert D. Swanson
23 Daniel S. Stouder
24 Attorneys for Defendants The California State
25 Grange, John Luvaas, Gerald Chernoff, and
26 Damian Parr.
27
28

PROOF OF SERVICE
[CCP §1013, 1013a]

CASE: National Grange of the Order of Patrons of Husbandry vs. California State Grange
COURT/CASE NO.: Sacramento County Superior Court Number 34-2012-00130439

The undersigned declares:

I am employed in the County of Sacramento, State of California. I am over the age of 18 years and not a party to the within action; I am employed by Boutin Jones Inc., 555 Capitol Mall, Suite 1500, Sacramento, California 95814-4603.

On this date I served the foregoing document described as:

DEFENDANTS' OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

on all parties in said action by causing a true copy thereof to be

- ☒ Transmitted via electronic mail before 5:00 p.m. on this date
- ☒ Placed in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing mail, ☐ sent certified mail, return receipt requested
- ☐ Personally delivered by _____ to the address set forth below
- ☐ Delivered personally to the address set forth below
- ☐ Sent Via Overnight Delivery by depositing in/at the appropriate facility for said service

addressed to the person(s) on whom it is to be served, whose name(s) and address(es) are listed below:

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Attorneys for defendant Robert MacFarland

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

EXECUTED on October 10, 2012 at Sacramento, California.


Micky Kelly