

1 **BOUTIN JONES INC.**
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5 John Luvaas, Gerald Chernoff, and Damian Parr.

FILED
ENDORSED

2013 MAY -1 PM 3:41

LEGAL PROCESS #2

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

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)
LUVAAAS, GERALD CHERNOFF and)
18 DAMIAN PARR,)

19 Defendants.

20 THE CALIFORNIA STATE GRANGE, a)
California non-profit,)
21

22 Cross-complainant,

23 vs

24 THE NATIONAL GRANGE OF THE)
ORDER OF PATRONS OF)
25 HUSBANDRY, Washington D.C., non-)
profit corporation; and Edward L. Luttrell,)
26 an individual, and ROES 1 through 10,)
Inclusive.)

27 Cross-defendants.
28

Case No.: 34-2012-00130439

THE CALIFORNIA STATE GRANGE'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO THE
MOTION TO STRIKE FILED BY
NATIONAL GRANGE AND EDWARD
LUTTRELL

Date: May 14, 2013

Time: 2:00 p.m.

Dept.: 53

Date Action Filed: 10/01/12

1 Cross-complainant The California State Grange ("California Grange") submits the following
2 Memorandum of Points and Authorities in Support of its opposition to the Motion to Strike
3 ("Motion") filed by National Grange and Edward Luttrell ("Cross-Defendants").

4 The Cross-Complaint alleges that contractual relationships exist between California Grange
5 and its Subordinate and Pomona Granges which require the payment of dues to California Grange.
6 On Demurrer, Cross-Defendants must accept these facts as true. It is not permissible for Cross-
7 Defendants attempt to "admit" the bylaws and then argue that their own interpretation of those
8 bylaws should trump the plain allegations of the pleading. For this reason, the Court should reject
9 Cross-Defendants' characterization of the pleaded contract as anything other than a binding
10 agreement. Similarly, California Grange did not allege that National Grange was a party to the
11 subject agreement. Cross-Defendants argue that is the case, relying on an improper use of judicial
12 notice (see generally, California Grange's Opposition to Demurrer), but that is an issue for trial. In
13 any event, California Grange denies that National Grange is a party to the agreements between
14 California Grange and its Subordinate and Pomona Granges. Again, this is an issue for summary
15 judgment and/or trial, not demurrer.

16 The cases on which Cross-Defendants rely in the Motion state, generally, that a defendant
17 cannot be liable in connection with tortuously interfering with a contract to which he is a party.
18 We do not dispute that general proposition, however, nothing in the Cross-Complaint indicates that
19 National Grange or Edward Luttrell are a party to the contract between California Grange and its
20 Subordinate or Pomona Granges alleged in the Second Cause of Action. Moreover, the Cross-
21 Complaint does not allege that National Grange or Edward Luttrell are parties to the prospective
22 economic relationship alleged in the Third Cause of Action. Instead, the Cross-Complaint alleges
23 independent unlawful acts by National Grange and Edward Luttrell that support an award of
24 punitive damages. Clearly National Grange seeks to insinuate itself into the relationship between
25 California Grange and its members. Whether it may properly do so will be adjudicated in this
26 case, but it should not be on demurrer. For these reasons, the Motion should be denied.

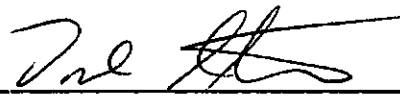
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28 ///

1 Dated: May 1, 2013

BOUTIN JONES INC.

2
3 By:


Robert D. Swanson

Daniel S. Stouder

4 Attorneys for Defendants The California State Grange,
5 John Luvaas, Gerald Chernoff, and Damian Parr.
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PROOF OF SERVICE
[CCP §1013, 1013a]

RE: The National Grange of the Order of Patrons of Husbandry v. The California State Grange
Case No.: 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:

**THE CALIFORNIA STATE GRANGE'S MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION THE MOTION TO STRIKE FILED BY NATIONAL
GRANGE AND EDWARD LUTTRELL**

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

- ☐ Transmitted Via Facsimile to the fax number set forth below 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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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

EXECUTED on May 1, 2013 at Sacramento, California.


Micky Kelly