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LEGAL PROCESS #2

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

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

Plaintiff,

vs.

THE CALIFORNIA STATE GRANGE, a  
California nonprofit corporation, and  
ROBERT McFARLAND, JOHN  
LUVAAAS, GERALD CHERNOFF and  
DAMIAN PARR,

Defendants.

Case No.: 34-2012-00130439

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

**Date: May 14, 2013  
Time: 2:00 p.m.  
Dept.: 53**

THE CALIFORNIA STATE GRANGE, a  
California non-profit,

Cross-complainant,

vs

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

Cross-defendants.

**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 demurrer ("Demurrer")  
3 filed by The National Grange of the Order of Patrons of Husbandry ("National Grange") and  
4 Edward Luttrell ("Cross-Defendants").

## 5 **I. INTRODUCTION**

6 Cross-Defendants' major premise in the Demurrer is as follows: The Demurrer should be  
7 granted because certain bylaws, which were not attached to the Cross-Complaint but for which  
8 Cross-Defendants ask the Court to take judicial notice, compel the Court to abstain from exercising  
9 jurisdiction over all six (6) causes of action in the Cross-Complaint. Cross-Defendants identify  
10 only one basis for why the Court should take judicial notice: National Grange previously attached  
11 copies of the subject bylaws to its initial complaint filed in this case. According to Cross-  
12 Defendants, they are entitled to judicial notice simply because the bylaws are "documents that  
13 have already been filed in court." Demurrer at pg 5, lines 2-9.

14 The Court should reject this premise as flawed for two independent reasons. First, the  
15 principle of judicial notice does not allow Cross-Defendants, on demurrer, to create conflicts with  
16 the pleadings just because certain documents were previously "filed" by one of the parties in the  
17 case. Second, in ruling on two prior injunction motions in this case, the Court has twice rejected  
18 Cross-Defendants' jurisdictional arguments. It should do so again here.

19 In addition, all six causes of action against National Grange and Luttrell are sufficiently  
20 supported by detailed allegations concerning Cross-Defendants' impermissible conduct. The  
21 Demurrer as a whole should therefore be rejected.

## 22 **II. ARGUMENT**

### 23 **A. Standard of Review**

24 "A demurrer challenges only the legal sufficiency of the complaint, not the truth of the  
25 factual allegations or plaintiff's ability to prove those allegations. The complaint must be liberally  
26 construed and given a reasonable interpretation, with a view to substantial justice between the  
27 parties. We treat as true not only the complaint's material factual allegations, but also the facts  
28 which may be implied or inferred from those expressly alleged." *Granquist v. Sandberg* (1990)

1 219 Cal. App. 3d 181, 183-84 (citations omitted). A plaintiff need not plead detailed evidentiary  
2 facts, but is instead only required to allege ultimate facts. Particularly with the advent of modern  
3 discovery procedures, greater specificity is not required. *Doheny Park Terrace Homeowners*  
4 *Ass'n, Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1098-1099.

5 California Code of Civil Procedure section 425.10 provides that the complaint must contain “a  
6 statement of the facts constituting the cause of action, in ordinary and concise language.” Cal. Code  
7 Civ. Proc. (“CCP”) § 425.10. Under this standard, a pleading will be upheld if it provides the  
8 defendant with “notice of the issues sufficient to enable preparation of a defense.” *Doe v. City of Los*  
9 *Angeles* (2007) 42 Cal.4th 531, 549-550. Thus, the plaintiff need only plead such facts as are  
10 necessary to “acquaint a defendant with the nature, source, and extent of his claim.” *Id.* at 550.  
11 “[T]he fair import of the language used in a pleading must be received to determine whether the  
12 adversary has been fairly apprised of the factual basis of the claim against him.” *Semole v.*  
13 *Sansoucie* (1972) 28 Cal. App. 3d 714, 721 (internal quotation marks omitted).

14 **B. Judicial Notice does not allow Cross-Defendants to “admit” any bylaws in**  
15 **connection with the Demurrer.**

16 A demurrer tests the pleading alone. A court cannot sustain a demurrer on the basis of  
17 extrinsic matter not appearing on the face of the pleading except for matters properly subject to  
18 judicial notice. *Bach v. McNelis* (1989) 207 Cal.App.3d 852, 864. A court can properly take  
19 judicial notice of the *existence* of a document, but can only take judicial notice of the truth of the  
20 contents of **documents such as findings of fact, conclusions of law, orders, and judgments.** *Id.*  
21 at 865. It is immaterial that the extrinsic matter, even if true, would defeat the cause of action,  
22 because a demurrer is not concerned with a party’s ability to prove the allegations of the pleading.  
23 *Id.* at 866 & fn. 5 (affidavit in other action that would render cause of action frivolous not a proper  
24 subject of judicial notice); accord, 5 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 947, pp.  
25 360–361.

26 In ruling on a demurrer, it is thus error to take judicial notice of the terms of an ordinary  
27 document submitted in support of the motion, or to actually interpret the terms. “[A] court cannot  
28 by means of judicial notice convert a demurrer into an incomplete evidentiary hearing in which the

1 demurring party can present documentary evidence and the opposing party is bound by what that  
2 evidence appears to show.” *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148  
3 Cal.App.4th 97, 115; accord, *C.R. v. Tenet Healthcare Corp.* (2009) 169 Cal.App.4th 1094, 1103–  
4 1104.

5 This is exactly what Cross-Defendants attempt to do through the Demurrer. The bylaws of  
6 California Grange and National Grange are not “findings of fact, conclusions of laws, orders, or  
7 judgments.” They are merely documents that exist somewhere in the Court’s file because National  
8 Grange attached them as exhibits to its complaint. And, Cross-Defendants’ entire foundation on  
9 Demurrer rests upon the Court accepting the truth of, as well as Cross-Defendants’ interpretation  
10 of, these bylaws. This is not a proper use of judicial notice. For purposes of the Demurrer, the  
11 Court should not rely at all on the extrinsic bylaws and it should disregard Cross-Defendants’ self-  
12 serving interpretation of the same. The trier of fact here will ultimately make that call after  
13 considering and weighing the evidence.

14 **C. Even if the Request for Judicial Notice was proper, the Court has already twice**  
15 **rejected Cross-Defendants’ jurisdictional arguments.**

16 In their Demurrer, Cross-Defendants largely rehash failed arguments made to this Court in  
17 connection with the parties’ two previous motions for preliminary injunction. To recap, the  
18 Demurrer essentially asks the Court to force California Grange to adjudicate its Cross-Complaint  
19 using National Grange’s “internal judicial procedures” instead of in the Superior Court. National  
20 Grange recently took a similar position in opposing Robert McFarland’s motion for preliminary  
21 injunction. There, this Court found that National Grange had originally invoked the jurisdiction of  
22 the Court to adjudicate the private association dispute raised by its complaint. Minute Order dated  
23 April 15, 2013 at pg. 2. The Court noted that National Grange’s request for the Court to refrain  
24 from exercising jurisdiction over McFarland’s internal “Grange Trial” therefore carried less  
25 weight. *Id.* at pg. 2-3. The Minute Order continued: “The Court has already noted the irony that  
26 it is The National Grange which initiated the instant litigation, seeking the same relief it now  
27 claims the Court should distance itself from by abstaining from the dispute.” *Id.* at pg. 3-4. The  
28

1 Court granted McFarland's motion for preliminary injunction, finding it necessary to preserve the  
2 status quo to ensure a trial on the merits in the Superior Court. *Id.*

3 Prior to that ruling, the Court denied National Grange's motion for a preliminary  
4 injunction. Minute Order dated October 17, 2012. In that motion, National Grange argued the  
5 Court had jurisdiction and that it should enforce what National Grange felt to be clear violations of  
6 its own bylaws. The Court did not grant National Grange's requested injunction, finding instead  
7 that the case should proceed to a trial on the merits of National Grange's complaint. *Id.* at pg. 1-2.

8 The unfairness of National Grange's shifting positions is apparent. For purposes of its  
9 claims against California Grange, the Court has jurisdiction. But when it comes to claims against  
10 it, that jurisdiction mysteriously disappears. This Court has already found that National Grange  
11 chose this forum and the Court has jurisdiction; that jurisdiction extends to California Grange's  
12 causes of action in the Cross-Complaint.

13 The Demurrer should be overruled and California Grange's Cross-Complaint should be  
14 adjudicated on the merits at trial. The causes of action in California Grange's Cross-Complaint  
15 should receive the same treatment as National Grange's causes of action.

16 **D. In any event, each cause of action alleged in the Cross-Complaint was properly**  
17 **pled.**

18 Apart from the predominant jurisdictional argument, Cross-Defendants take minor issue  
19 with each cause of action in the Cross-Complaint. We will address Cross-Defendants' secondary  
20 arguments in the order in which they were presented.

21 1. Conversion

22 Conversion is a strict liability tort. The foundation of the action rests neither in the  
23 knowledge nor the intent of the defendant. Instead, the tort consists in the breach of an absolute  
24 duty; the act of conversion itself is tortious. Therefore, questions of the defendant's good faith, lack  
25 of knowledge, and motive are ordinarily immaterial. *See Burlesci v. Petersen* (1998) 68  
26 Cal.App.4th 1062, 1065

27 In the Cross-Complaint, California Grange alleges that it "was, and still is, the owner and  
28 was, and still is, entitled to possession of any dues which National Grange received directly from

1 the Subordinate Granges.” Cross-Complaint, at ¶ 13. California Grange further alleges that  
2 “[b]eginning on or about October 1, 2013, National Grange constructively took the property  
3 described above from California Grange’s possession and converted the same to its own use.” *Id.*,  
4 at ¶ 15.

5 In its Demurrer, National Grange argues that California Grange alleged “unspecified sums  
6 of money” in its conversion cause of action and therefore those allegations are somehow deficient  
7 because a “generalized claim for money is not actionable as conversion.” Demurrer, at 5:19 –  
8 5:27. National Grange’s argument fails here. California Grange did allege that specific sums of  
9 money have been converted by National Grange – i.e., the dues collected from the Subordinate  
10 Granges. Those sums of money are specific and capable of identification. *See Fischer v.*  
11 *Machado*, 50 Cal.App.4<sup>th</sup> 1069, 1070 (1996) (“While it is true that money cannot be subject of an  
12 action for conversion unless a specific sum capable of identification is involved, it is not necessary  
13 that each coin or bill be earmarked.”). It is of no consequence that the amounts of those dues  
14 converted by National Grange are not within California Grange’s present knowledge because  
15 California Grange is not charged with identifying each coin or bill. The exact dollar amount of  
16 those dues will be determined in the course of discovery. National Grange is adequately  
17 acquainted with the nature, scope, and extent of this cause of action. That is all that is required of  
18 California Grange.

19 The Demurrer to the First Cause of Action should be overruled.

## 20 2. Tortious Interference with Contract

21 The Cross-Complaint avers that contractual relationships exist between California Grange  
22 and its Subordinate and Pomona Granges which require the payment of dues to California Grange.  
23 On Demurrer, Cross-Defendants must accept these facts as true. *Granquist*, 219 Cal. App. 3d at  
24 183-84. As noted above, it is not permissible for Cross-Defendants to “admit” the bylaws and then  
25 argue that their interpretation of the same should trump the plain allegations of the pleading. For  
26 this reason, the Court should reject Cross-Defendants’ characterization of the pleaded contract as  
27 anything other than a binding agreement (i.e. how can the Court say as a matter of law that a  
28 Subordinate Grange could not sue California Grange for breach of contract? - see Demurrer at

pg.6, ln 18-22). Similarly, California Grange did not allege that National Grange was a party to the subject contract. Cross-Defendants only extrapolate that fact using the “judicial notice” tactic which should be rejected. In any event, California Grange denies that National Grange is a party to the agreements between California Grange and its Subordinate and Pomona Granges. Again, this is an issue for summary judgment and/or trial, not demurrer.

Finally, Luttrell is named individually in this action because he “personally participated in and directed the tortious conduct alleged herein on behalf of National Grange.” Cross-Complaint, at ¶ 3. Officers of a corporation are personally liable for the tortious acts committed on behalf of the corporation where the officer authorizes, directs, or in some meaningful sense actively participates in the wrongful conduct. *Balsam v. Trancos, Inc.* (2012) 203 Cal.App.4th 1083, 1109.

The Demurrer to the Second Cause of Action should be overruled.

### 3. Intentional Interference with Prospective Economic Advantage.

As with the cause of action for tortious interference with contract, the court should reject any attempt by Cross-Defendants to rely on the “bylaws argument” in connection with the Demurrer to the third cause of action for interference with prospective economic advantage. Similarly, Luttrell is personally liable for this tort because he personally participated in and directed the wrongful conduct. *Id.*

In addition, California Grange’s Third Cause of the Action incorporates by reference all prior allegations of the Cross-Complaint. *See* Cross-Complaint, at ¶ 26. In those prior paragraphs of the Cross-Complaint, California Grange alleges various wrongful and fraudulent acts by National Grange including impermissibly taking dues from the Subordinate Granges and creating the “Counterfeit Website [which] purport[ed] to be the official website of The California State Grange.” Cross-Complaint, at ¶¶ 9 and 12 – 18. Therefore, California Grange has alleged independently unlawful acts on the part of National Grange that support the Third Cause of Action.

Moreover, in Paragraph 29 of the Cross-Complaint, California Grange alleges that National Grange, “by actually converting . . . [the] dues from the Subordinate Granges . . . disrupted California Grange’s economic relationships.” Cross-Complaint, at ¶ 29. Therefore, California

1 Grange has alleged an independently unlawful act (i.e. the conversion) by National Grange. The  
2 Demurrer as to the Third Cause of Action should be overruled.

3 4. Unfair Competition

4 Our Unfair Competition Law prohibits “any unlawful, unfair or fraudulent business act or  
5 practice and unfair, deceptive, untrue or misleading advertising.” B&P § 17200. The Unfair  
6 Competition Law authorizes injunctive relief and restitution. B&P § 17203. The statute imposes  
7 strict liability; it is not necessary to show the defendant intended to injure the plaintiff.

8 B&P § 17200’s coverage is “sweeping, embracing...anything that can properly be called a  
9 business practice and that at the same time is forbidden by law.” *Cel-Tech Communications, Inc.*  
10 *v. Los Angeles Cellular Tel. Co.* (1999) 20 Cal.4th 163, 180 referencing a quote from *Barquis v.*  
11 *Merchants Collection Assn.* (1972) 7 Cal.3d 94, 113. It governs “anti-competitive business  
12 practices” as well as injuries to consumers, and has, as a major purpose, “the preservation of fair  
13 business competition.” *Barquis*, 7 Cal.3d at 110 (Emphasis added). By proscribing “any unlawful”  
14 business practice, “section 17200 ‘borrows’ violations of other laws and treats them as unlawful  
15 practices that the unfair competition law makes independently actionable.” *Cel-Tech*, 20 Cal. 4th  
16 at 180. (Emphasis added). “However, the law does more than just borrow. The statutory language  
17 referring to ‘any unlawful, unfair *or* fraudulent’ practice (italics added) makes clear that a practice  
18 may be deemed unfair even if not specifically proscribed by some other law.” *Id.* “Because  
19 Business and Professions Code section 17200 is written in the disjunctive, it establishes three  
20 varieties of unfair competition—acts or practices which are unlawful, or unfair, or fraudulent. In  
21 other words, a practice is prohibited as “unfair” or “deceptive” even if not “unlawful” and vice  
22 versa.” *Id.*

23 In the Fourth Cause of Action for Unlawful Competition, the Cross-Complaint alleges that  
24 the “conduct described above as to National Grange was unfair, unlawful, and/or fraudulent and  
25 constitutes unfair competition under California Business and Professions Code section 17200.”  
26 Cross-Complaint, at ¶ 34. Thus the Cross-Complaint’s allegations are made in the disjunctive. In  
27 its Demurrer, National Grange argues *only* that California Grange has not alleged facts that  
28 demonstrate “unfair” conduct by National Grange. Even if that was the case, California Grange



1 has alleged more than “unfairness” including the “unlawful” and “fraudulent” grounds for finding  
2 violations of section 17200. See Cross-Complaint, at ¶¶ 8-11 for a number of allegations  
3 concerning National Grange’s unfair and fraudulent and unlawful activity.

4 Cross-Defendants also contend that National Grange and California Grange are not  
5 competitors. This statement is unfounded and, in any event, not supported by the Cross-Complaint  
6 which must be accepted as true. Only through a tortured interpretation of the extrinsic bylaws  
7 could Cross-Defendants ever conclude that it is not a competitor with California Grange. In any  
8 event, this is a factual dispute which must be adjudicated on the merits, not in a demurrer.

9 Therefore, at this pleading stage, California Grange has alleged enough to survive the  
10 Demurrer as to the Fourth Cause of Action.

#### 11 5. Unjust Enrichment

12 In its Demurrer, National Grange argues that since “California Grange does not allege that  
13 it provided some particular service of which the National Grange improperly collected the  
14 proceeds, the demurrer should be sustained. . . .” Demurrer, at 12:6 – 12:8. This argument must  
15 fail under California law. “The elements of an unjust enrichment claim are the receipt of a benefit  
16 and the unjust retention of the benefit at the expense of another.” *Peterson v. Celco Partnership*  
17 (2008) 164 Cal.App.4th 1583, 1593 (quotation marks omitted). There is no requirement that the  
18 party seeking restitution must have provided a particular service. *Id.* All that California Grange  
19 needs to allege is the receipt of a benefit by National Grange and the retention of that benefit at the  
20 expense of California Grange. That is precisely what the Cross-Complaint alleges. See Cross-  
21 Complaint, at ¶ 39 (“By its conduct, National Grange obtained the benefit or use of dues payments  
22 from the Subordinate Granges which belonged to and should have been paid to California Grange,  
23 and has been unjustly enriched at the expense of California Grange”). For these reasons, the  
24 Demurrer to the Fifth Cause of Action should be overruled.

#### 25 6. Declaratory Relief

26 Cross-Defendants only attack this cause of action on jurisdictional (“bylaws”) grounds.  
27 California Grange incorporates here its opposition from above to Cross-Defendants’ jurisdictional  
28 arguments.

1  
2           7.           Leave to Amend is Requested and Should be Granted.

3           “Liberality in permitting amendment is the rule, not only where a complaint is defective as to  
4 form but also where it is deficient in substance, if a fair prior opportunity to correct the substantive  
5 defect has not been given.” *McDonald v. Superior Court* (1986) 180 Cal.App.3d 297, 304. In the  
6 event the Court concludes California Grange has failed to plead facts sufficient to state any particular  
7 cause of action, leave is hereby requested to file an amended cross-complaint so that California  
8 Grange may have an opportunity to rectify any deficiencies.

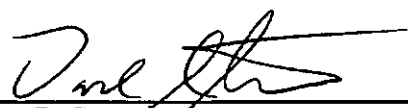
9                                   **III. CONCLUSION**

10           Cross-Defendants’ attempt to judicially notice the bylaws attached to the Demurer is  
11 procedurally improper and irrelevant for present purposes. Furthermore, the Cross-Complaint  
12 complies with California’s liberal pleading standards. The Court should overrule Cross-  
13 Defendants’ Demurrer.

14  
15 Dated: May 1, 2013

BOUTIN JONES INC.

16  
17 By: \_\_\_\_\_

  
Robert D. Swanson  
Daniel S. Stouder  
Attorneys for Defendants The California State  
Grange, John Luvaas, Gerald Chernoff, and  
Damian Parr.

**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 DEMURRER 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

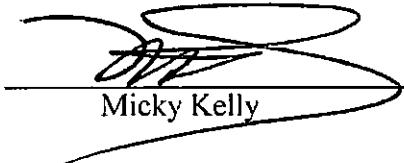
addressed to the person(s) on whom it is to be served, whose name(s) and address(es) are listed below:

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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