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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CENTER FOR COMPETITIVE
POLITICS,

Plaintiff,

v.

KAMALA HARRIS,

Defendant.

No. 2:14-cv-00636-MCE-DAD

MEMORANDUM AND ORDER

On March 7, 2014, Plaintiff Center for Competitive Politics (“Plaintiff”) filed a Complaint for Declaratory and Injunctive Relief against Defendant Kamala Harris in her official capacity as Attorney General of the State of California (“Defendant”). Compl., ECF No. 1. Plaintiff then filed a motion for a preliminary injunction seeking to enjoin Defendant from requiring an unredacted copy of Plaintiff’s IRS Form 990 Schedule B as a condition of soliciting funds in California. ECF No. 9. Defendant opposed the Motion, ECF No. 10, and the Court held a hearing on the Motion on April 17, 2014. At the hearing, the Court took the Motion under submission; this written order follows. For the following reasons, Plaintiff’s Motion for a Preliminary Injunction, ECF No. 9, is DENIED.

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BACKGROUND¹

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3 Plaintiff is a Virginia nonprofit corporation recognized by the Internal Revenue
4 Service as a § 501(c)(3) educational organization. To support its activities, Plaintiff
5 solicits charitable contributions nationwide. In order to legally solicit tax-deductible
6 contributions in California, an entity must be registered with the state's Registry of
7 Charitable Trusts ("Registry"), which is administered by California's Department of
8 Justice. To maintain membership in the Registry, nonprofit corporations must file annual
9 periodic written reports with the state Attorney General, which include the Annual
10 Registration Renewal Fee Report as well as the Internal Revenue Service Form 990.
11 Form 990 has a supplement, Schedule B, which lists the names and addresses of an
12 organization's contributors.²

13 Plaintiff has been a member of the Registry since 2008. On January 9, 2014,
14 Plaintiff filed its Annual Registration Renewal Fee Report with Defendant, including a
15 copy of its Form 990 and a redacted version of its Schedule B omitting the names and
16 addresses of its contributors. Plaintiff subsequently received a letter from Defendant
17 dated February 6, 2014 ("Letter"). See ECF No. 1-1. In the Letter, Defendant
18 acknowledged receipt of Plaintiff's periodic written report, but stated that "[t]he filing is
19 incomplete because the copy of [its] Schedule B, Schedule of Contributors, does not
20 include the names and addresses of contributors." Id. (emphasis omitted). The Letter
21 states that "[t]he Registry retains Schedule B as a confidential record for IRS Form 990
22 and 990-EZ filers" and requires that Plaintiff must "[w]ithin 30 days of the date of this
23 letter . . . submit a complete copy of Schedule B, Schedule of Contributors, for the fiscal
24 year noted above, as filed with the Internal Revenue Service." Id. (emphasis omitted).

25
26 ¹ The facts are taken, often verbatim, from Plaintiff's Complaint, ECF No. 1, and Motion, ECF
No. 9, unless stated otherwise.

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28 ² To reduce the reporting burden on filers, Defendant adopted IRS Form 990 as the primary
reporting document for charitable entities required to file annual reports with the Registry. Opp'n, ECF
No. 10 at 11 (citing Cal. Code Regs. tit. 11, § 301). The Schedule B filed by public charities is treated as a
confidential document and is not made available for public viewing. See id.; ECF No. 10-8 at 2-3.

1 Plaintiff seeks to enjoin Defendant from requiring an unredacted copy of its IRS
2 Form 990 Schedule B as a condition of soliciting funds in California. Plaintiff argues that
3 Defendant's demand is preempted by federal law and that it unconstitutionally infringes
4 upon the freedom of association. Mot., ECF No. 9.

5
6 **STANDARD**
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8 A preliminary injunction is an extraordinary remedy, and the moving party has the
9 burden of proving the propriety of such a remedy by clear and convincing evidence. See
10 Granny Goose Foods, Inc. v. Teamsters, 415 U.S. 423, 442 (1974). The party
11 requesting preliminary injunctive relief must show that "he is likely to succeed on the
12 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that
13 the balance of equities tips in his favor, and that an injunction is in the public interest."
14 Winter v. Natural Resources Defense Council, 555 U.S. 7, 20 (2008); Stormans, Inc. v.
15 Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting Winter). To grant preliminary
16 injunctive relief, a court must find that "a certain threshold showing is made on each
17 factor." Leiva-Perez v. Holder, 640 F.3d 962, 966 (9th Cir. 2011).

18 Alternatively, under the so-called sliding scale approach, as long as the Plaintiffs
19 demonstrate the requisite likelihood of irreparable harm and show that an injunction is in
20 the public interest, a preliminary injunction can still issue so long as serious questions
21 going to the merits are raised and the balance of hardships tips sharply in Plaintiffs'
22 favor. Alliance for Wild Rockies v. Cottrell, 632 F.3d 1127, 1131-36 (9th Cir. 2011)
23 (concluding that the "serious questions" version of the sliding scale test for preliminary
24 injunctions remains viable after Winter).

25 These two alternatives represent two points on a sliding scale, pursuant to which
26 the required degree of irreparable harm increases or decreases in inverse correlation to
27 the probability of success on the merits. Roe v. Anderson, 134 F.3d 1400, 1402 (9th Cir.
28 1998); United States v. Nutri-cology, Inc., 982 F.2d 1374, 1376 (9th Cir. 1985). Under

1 either formulation of the test for granting a preliminary injunction, however, the moving
2 party must demonstrate a significant threat of irreparable injury. Oakland Tribune, Inc. v.
3 Chronicle Publ'g. Co., 762 F.2d 1374 (9th Cir. 1985).

4 5 **ANALYSIS**

6 7 **A. Likelihood of Success on the Merits**

8 Through this action, Plaintiff seeks to block Defendant from requiring that it
9 provide an unredacted copy of Plaintiff's IRS Form 990 Schedule B to Defendant as a
10 condition of soliciting funds in California. Plaintiff asserts that it will prevail on the merits
11 on two separate grounds. First, Plaintiff argues that the Internal Revenue Code shields
12 the information that Defendant seeks and that Defendant's demand is therefore
13 preempted by federal law. Second, Plaintiff contends that Defendant's demand
14 unconstitutionally infringes upon its freedom of association. The Court will address each
15 argument in turn.

16 **1. Federal Law**

17 As discussed above, Plaintiff files tax information on Form 990 with the IRS.
18 While some of Plaintiff's tax return information is available to the public, the IRS does not
19 publically disclose the names or addresses of any of Plaintiff's contributors. See
20 26 U.S.C. § 6104(b), (d)(3) (providing that the public inspection copy of 501(c)(3)
21 organization's tax information "shall not require the disclosure of the name or address of
22 any contributor to the organization"). Federal law also prevents the Secretary of the
23 Treasury from releasing the names and addresses of contributors to section 501(c)(3)
24 organizations to state agencies. See 26 U.S.C. § 6104(c)(3) ("Upon written request by
25 an appropriate State officer, the Secretary may make available for inspection or
26 disclosure returns and return information of any organization described in section 501(c)
27 (other than organizations described in paragraph (1) or (3) thereof) for the purpose of,
28 and only to the extent necessary in, the administration of State laws regulating the

1 solicitation or administration of the charitable funds or charitable assets of such
2 organizations.”) (emphasis added). Through this statutory language, Plaintiff argues that
3 federal law preempts Defendant’s request for a copy of its unredacted Schedule B form.

4 The Supreme Court has articulated two cornerstones of its preemption
5 jurisprudence. “First, the purpose of Congress is the ultimate touchstone in every pre-
6 emption case. Second, in all pre-emption cases, and particularly in those in which
7 Congress has legislated in a field which the States have traditionally occupied, we start
8 with the assumption that the historic police powers of the States were not to be
9 superseded by the Federal Act unless that was the clear and manifest purpose of
10 Congress.” Wyeth v. Levine, 555 U.S. 555, 565 (2009) (internal citations and quotations
11 omitted). “Courts are reluctant to infer preemption, and it is the burden of the party
12 claiming that Congress intended to preempt state law to prove it.” Viva! Int’l Voice For
13 Animals v. Adidas Promotional Retail Operations, Inc., 162 P.3d 569, 572 (Cal. 2007)
14 (internal citations omitted). Here, Plaintiff contends that because Defendant’s actions
15 contravene the clear intent of Congress, Defendant’s actions are invalid through express
16 preemption, field preemption, and conflict preemption.

17 2. Express Preemption

18 Relying on 26 U.S.C. § 6104, Plaintiff contends that the Internal Revenue Code
19 (“IRC”) “expressly preempts a state attorney general from compelling Plaintiff to hand
20 over its Schedule B as filed.” Mot., ECF No. 9-1 at 13-14. “[E]xpress preemption arises
21 when Congress defines explicitly the extent to which its enactments pre-empt state law. .
22 . . and when Congress has made its intent known through explicit statutory language,
23 the courts' task is an easy one.” Viva! Int’l Voice For Animals, 162 P.3d at 571-72.

24 Plaintiff’s argument is unsupported by the text of the IRC. The IRC only bars the
25 IRS from providing the requested Schedule B to state agencies, it does not address
26 whether a state official, such as Defendant, may request such information directly from
27 an organization such as Plaintiff. Cf. Stokwitz v. United States, 831 F.2d 893, 896 (9th
28 Cir. 1987) (noting that “there is no indication in either the language of section 6103 or its

1 legislative history that Congress intended to enact a general prohibition against public
2 disclosure of tax information”). Therefore, because Congress did not express any intent
3 to prevent state agencies from making requests for tax information such as Defendant’s
4 directly from 501(c)(3) organizations in the language of Section 6104, or any other
5 section of the IRC, Plaintiff may not rely on express preemption.

6 **3. Field and Conflict Preemption**

7 Plaintiff also argues that Defendant’s action is preempted because “Congress has
8 well occupied the field regarding the disclosure of federal tax returns” and that “the
9 [Defendant’s] actions stand[] as an obstacle to the accomplishment and execution of the
10 full purposes and objectives of Congress.” Mot., ECF No. 9-1 at 15-16 (internal citation
11 omitted). “Even without an express provision for preemption, . . . [w]hen Congress
12 intends federal law to ‘occupy the field,’ state law in that area is preempted. And even if
13 Congress has not occupied the field, state law is naturally preempted to the extent of
14 any conflict with a federal statute.” Crosby, 530 U.S. 363, 372-73 (2000).

15 Plaintiff asserts that because the “IRC comprehensively regulates how
16 confidential tax return information must be treated—and assesses significant sanctions
17 for violations[,]” Defendant’s action, “if fully implemented, would interfere with Congress’s
18 occupation of the field.” ECF No. 9-1 at 15-16. Plaintiff points only to the statutory
19 language of the IRC, specifically sections 6103 and 6104, to support its contention. See
20 ECF No. 9-1 at 15. An examination of the IRC’s legislative history reveals that
21 Congress’s intent in enacting “the elaborate disclosure procedures of section 6103” was
22 not directed toward preventing actions such as Defendant’s, but instead to “[control] the
23 distribution of information the IRS receives directly from the taxpayer-information the
24 taxpayer files under compulsion and the threat of criminal penalties.” Stokwitz, 831 F.2d
25 at 895 (citing the Congressional Record). The Ninth Circuit explained that

26 [t]he legislative history of section 6103 indicates Congress's
27 overriding purpose was to curtail loose disclosure practices
28 by the IRS. Congress was concerned that IRS had become a
“lending library” to other government agencies of tax
information filed with the IRS, and feared the public's

1 confidence in the privacy of returns filed with IRS would
2 suffer. The Senate Report explained: “[T]he IRS probably
3 has more information about more people than any other
4 agency in this country. Consequently, almost every other
5 agency that has a need for information . . . logically seeks it
6 from the IRS.” Congress also sought to end “the highly
7 publicized attempts to use the Internal Revenue Service for
8 political purposes” involving delivery of tax returns to the
9 White House by the IRS; and to regulate “the flow of tax data
10 from the IRS to State Governments.” In short, section 6103
11 was aimed at curtailing abuse by government agencies of
12 information filed with the IRS. At the same time, Congress
13 realized tax information on file with the IRS was often
14 important to other government agencies. Revised section
15 6103 represents a legislative balancing of the right of
16 taxpayers to the privacy of tax information in the hands of the
17 IRS and the legitimate needs of others for access to that
18 information.

11 Stokwitz, 831 F.2d at 894-95 (9th Cir. 1987) (internal citations and quotations omitted)
12 (emphasis added). The Ninth Circuit also noted that “the statutory definitions of ‘return’
13 and ‘return information’ to which the entire statute relates, confine the statute’s coverage
14 to information that is passed through the IRS,” not information provided by a taxpayer to
15 another entity. Id. at 895-96 (emphasis added). Thus, it is clear that Congress’s intent
16 in regulating how confidential tax return information must be treated was to restrict how
17 tax information is obtained from the IRS, not from taxpayers directly.

18 Nonetheless, Plaintiff argues that “[Defendant’s] interpretation [of section § 6104]
19 would render [it] devoid of any practical effect [and that] Congress’s purpose would be
20 plainly frustrated if state officials regulating charitable solicitations could unilaterally
21 compel Schedule B information from tax-exempt organizations.” Reply, ECF No. 11 at
22 6-7. However, in Stokwitz, the Ninth Circuit rejected a similar argument. In that case,
23 the appellant argued that the “purpose of the protection afforded tax data by sections
24 6103 and 7213 ‘would be meaningless if such protection were not extended to copies of
25 tax returns and to the pertinent data and information in the hands of the taxpayer.’”
26 Stokwitz, 831 F.2d at 896. The Ninth Circuit rejected that contention noting that “[i]t is
27 quite clear . . . that this was not Congress’s view when it revised section 6103.” Id.
28 Citing the Senate report, the Court concluded that Congress “disclaimed any intention ‘to

1 limit the right of an agency (or other party) to obtain returns or return information directly
2 from the taxpayer.” Id. Therefore, there is little doubt that Congress’s intent was to
3 regulate the IRS, not state agencies.

4 Plaintiff’s attempts to distinguish Stokwitz are unavailing. Although the provision
5 in question, namely section § 6104, was added in 2006, there is no legislative record to
6 suggest that Congress intended to deviate from its intent as expressed in Stokwitz.
7 Absent any evidence that Congress intended to prevent state Attorneys General from
8 obtaining the requested information directly from organizations, Plaintiff cannot meet its
9 burden in showing that it is likely to succeed on the merits of its preemption argument.
10 Therefore, a preliminary injunction on the basis of preemption is not warranted.

11 **4. Freedom of Association**

12 Plaintiff also argues that it will prevail on the merits because Defendant’s demand
13 unconstitutionally infringes upon its First Amendment freedom of association.
14 Specifically, Plaintiff objects to Defendant’s demand because “[f]inancial support is the
15 lifeblood of organizations engaged in public debate” and because Defendant’s action
16 “threatens to curtail that necessary supply of resources.” Mot., ECF No. 9-1 at 18.
17 Plaintiff argues that while “a government may compel certain disclosures in certain
18 circumstances[,] . . . associational freedom may [only] be limited, so long as the state
19 does so narrowly and specifically, in pursuit of an obvious and compelling government
20 interest.” Id. at 17. Thus, Plaintiff argues that because “the Attorney General has
21 provided no particularized rationale for obtaining CCP’s donor information[,]”
22 Defendant’s request violates the First Amendment. Reply, ECF No. 11 at 11.

23 However, in the Ninth Circuit, courts first address whether a plaintiff has
24 presented a prima facie showing of arguable first amendment infringement. See Perry v.
25 Schwarzenegger, 591 F.3d 1126, 1140 (9th Cir. 2009). Such a showing requires
26 Plaintiff to demonstrate that Defendant’s action “will result in (1) harassment,
27 membership withdrawal, or discouragement of new members, or (2) other consequences
28 which objectively suggest an impact on, or ‘chilling’ of, the members’ associational

1 rights.” Brock v. Local 375, Plumbers Int’l Union of Am., AFL-CIO, 860 F.2d 346, 350
2 (9th Cir. 1988) (citations omitted); see also Dole v. Serv. Employees Union, AFL-CIO,
3 Local 280, 950 F.2d 1456, 1459–61 (9th Cir.1991). “This must be shown by
4 presentation of objective and articulable facts, which go beyond broad allegations or
5 subjective fears.” Van Fossen v. United States, CV-F-93-137-DLB, 1993 WL 655008 at
6 *2 (E.D. Cal. Dec. 27, 1993) (citing Brock, 860 F.2d at 350). “A merely subjective fear of
7 future reprisals is an insufficient showing of infringement of associational rights.” Id.
8 (citing Buckley v. Valeo, 424 U.S. 1, 71-72 (1976)). If Plaintiffs “can make the necessary
9 prima facie showing, the evidentiary burden will then shift to” Defendant. Brock, 860
10 F.2d at 350.

11 Rather than argue that Plaintiff has satisfied the prima facie requirement, Plaintiff
12 disputes its applicability arguing that Brock and Dole were factually distinguishable labor
13 cases.³ Instead, Plaintiff argues that the Court should follow a line of cases where
14 plaintiffs were not required to first make a prima facie showing of first amendment
15 infringement. Plaintiff points to Talley v. California, 362 U.S. 60, 65 (1960) and Acorn
16 Investments v. City of Seattle, 887 F.2d 219, 225 (9th Cir. 1989) as examples of such
17 cases. However, these cases are distinguishable from the facts at hand as they pertain
18 to instances where members of groups would be publicly identified and, as a result, face
19 retaliation. See Talley, 362 U.S. at 65 (relying on earlier holdings where the
20 “identification [of group members] and fear of reprisal might deter perfectly peaceful
21 discussions of public matters of importance”); Acorn Investments, 887 F.2d at 225
22 (striking down a city ordinance requiring the public disclosure of the names and
23 addresses of shareholders of corporations because it may have a chilling effect on
24 expression). In contrast, here, Plaintiff is challenging Defendant’s request to view
25 Plaintiff’s Schedule B in confidence and has not alleged that its members would face any
26 retaliation or reprisals.

27 _____
28 ³ The Ninth Circuit has also applied this first amendment framework, however, in non-labor cases.
See, e.g., Perry v. Schwarzenegger, 591 F.3d 1126, 1140 (9th Cir. 2009).

1 Brock provides a more analogous set of facts. In that case, the Secretary of
2 Labor, pursuant to his statutory powers, “initiated a compliance audit” of Local 375 after
3 the Department of Labor discovered a discrepancy. Brock, 860 F.2d at 348. The
4 Secretary of Labor subpoenaed “all records pertaining to the fund” and the union refused
5 to comply, arguing that doing so would violate its First Amendment rights. Id. The Ninth
6 Circuit held that in order to prevail on a freedom of association claim in the face of a
7 “lawful governmental investigation[,]” the union must demonstrate a “prima facie showing
8 of arguable first amendment infringement.” Id. at 349-51.

9 Based on the evidence provided to the Court, Defendant’s request appears to be
10 justified by a legitimate law enforcement purpose pursuant to Defendant’s role as the
11 chief regulator of charitable organizations in the state. See Cal. Gov’t Code §§
12 12598(a), 12581. Under California’s Supervision of Trustees and Fundraisers for
13 Charitable Purposes Act, Defendant is charged with supervising charitable trusts and
14 public benefit corporations incorporated in, or conducting business in California and to
15 protect charitable assets for their intended use. See Opp’n, ECF No. 10 at 10 (citing
16 Cal. Gov’t Code §§ 12598(a), 12581). In addition, Defendant has “broad powers under
17 common law and California statutory law to carry out these charitable trust enforcement
18 responsibilities.” Cal. Gov’t Code § 12598(a). Defendant may investigate transactions
19 and relationships to ascertain whether the purposes of the corporation or trust are being
20 carried out. Opp’n, ECF No. 10 at 10. In order to do so, Defendant may require any
21 agent, trustee, fiduciary, beneficiary, institution, association, or corporation, or other
22 person to appear and to produce records. Id. (citing Cal. Gov’t Code § 12588). Such an
23 order “shall have the same force and effect as a subpoena.” Cal. Gov’t Code § 12589.
24 Defendant may also require periodic written reports from charitable organizations. See
25 Cal. Gov’t Code § 12586. Further, pursuant to the Supervision of Trustees and
26 Fundraisers for Charitable Purposes Act, Defendant maintains the Registry, and in so
27 doing, has the power to obtain “whatever information, copies of instruments, reports, and
28 records are needed for the establishment and maintenance of the register.” Id. (citing

1 Cal. Gov't Code § 12584). In light of Defendant's role as the state's chief regulator of
2 charitable organizations, Defendant's request is more analogous to the facts in Brock
3 and Dole than the challenges to ordinances in Talley and Acorn Investments. Therefore,
4 the Court concludes that the prima facie showing requirement as articulated by the Ninth
5 Circuit in Brock is applicable in this case.

6 Here, Plaintiff has not articulated any, objective specific harm that will result to its
7 members if Defendant is permitted to require that Plaintiff produce an unredacted copy
8 of its Schedule B. Plaintiff only suggests that if it is forced to comply with Defendant's
9 demand, such an action "threatens to curtail" its financial support. ECF No. 9-1 at 18.
10 As Defendant notes, "[m]ere speculation about or opinion of the possible consequences
11 of such disclosure is entirely inadequate" to support a prima facie showing of arguable
12 first amendment infringement. ECF No. 10 at 18; see Dole, 921 F.2d at 974. For
13 example, in Dole, the Ninth Circuit held that "two letters from members who stated that
14 they would no longer attend meetings" satisfied the prima facie showing requirement and
15 "clearly suggest[ed] 'an impact on . . . the members' associational rights.'" Dole, 950
16 F.2d at 1460 (citing Brock, 860 F.2d at 350). Plaintiff did not make such a showing here.
17 Therefore, because Plaintiff failed to establish a prima facie showing of arguable first
18 amendment infringement, it has not demonstrated that it is likely to prevail on the merits
19 at this point in the proceeding.

20 Moreover, even if Plaintiff had presented a prima facie showing, based on the
21 evidence before the Court at this time, Defendant's request appears to be justified by
22 compelling state interests and is narrowly tailored to achieve those interests.
23 Defendant's interest in performing her regulatory and oversight function as delineated by
24 state law is compelling and substantially related to the disclosure requirement.
25 Defendant points out that the requested information allows her to determine "whether an
26 organization has violated the law, including laws against self-dealing, Cal. Corp. Code
27 § 5233; improper loans, id. § 5236; interested persons, id. § 5227; or illegal or unfair
28 business practices, Cal. Bus. & Prof. Code § 17200." Opp'n, ECF No. 10 at 19-20.

1 Further, the required disclosure appears to be narrowly tailored with respect to Plaintiff's
2 right of association because the Registry is kept confidential and Plaintiff's Schedule B
3 would not be disclosed publically. On this ground too, then, Plaintiff failed to show it is
4 likely to succeed on the merits.

5 **B. Irreparable Harm, Balancing the Hardships, and Public Interest**

6 Plaintiff asserts that it will suffer irreparable injury through the loss of its First
7 Amendment freedoms. While “[a]n alleged constitutional infringement will often alone
8 constitute irreparable harm. . . In this case, however, the constitutional claim is too
9 tenuous to support” the issuance of a preliminary injunction. Goldie's Bookstore, Inc. v.
10 Superior Court of State of Cal., 739 F.2d 466, 472 (9th Cir. 1984). Because “the Court
11 finds [that] no serious First Amendment questions are raised. . . there is no risk of
12 irreparable injury to Plaintiffs' contributors.” ProtectMarriage.com v. Bowen,
13 599 F. Supp. 2d at 1226; see Dex Media W., Inc. v. City of Seattle, 790 F. Supp. 2d
14 1276, 1280-81 (W.D. Wash. 2011) (stating that “[b]ecause the court ultimately concludes
15 that Plaintiffs fail to establish either a likelihood of irreparable injury or that a preliminary
16 injunction would be in the public interest”). Based on the evidence before it, the Court
17 does not find that Plaintiff will suffer irreparable harm if a preliminary injunction is not
18 issued. Moreover, in light of the facts as presented to the Court at this stage in the
19 proceeding, it is in the public interest that Defendant continues to serve chief regulator of
20 charitable organizations in the state in the manner sought.

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CONCLUSION

Because Plaintiff failed to demonstrate that it is likely to succeed on the merits or that Defendant's action will cause a significant threat of irreparable injury, Plaintiff's Motion for Preliminary Injunction, ECF No. 9, is DENIED.

IT IS SO ORDERED.

Dated: May 13, 2014



MORRISON C. ENGLAND, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT