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LEGAL PROCESS #3

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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SACRAMENTO**
12

13 THE NATIONAL GRANGE OF THE ORDER OF
14 PATRONS OF HUSBANDRY, a Washington, D.C.
15 nonprofit corporation,

16 Plaintiff,

17 vs.

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

22 Defendants
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Case No. 34-2012-00130439

**DEFENDANT ROBERT MCFARLAND'S
OPPOSITION TO PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION**

**DATE: OCTOBER 17, 2012
TIME: 2:00 p.m.
DEPT: 53**

1 Defendant Robert McFarland hereby submits the following Opposition to Plaintiff's Motion for
2 Preliminary Injunction.

3 **I. FACTUAL BACKGROUND**

4 Defendant Robert McFarland was duly elected to a second 2-year term as President of the
5 California State Grange by majority vote of the California State Grange members in 2011. (**See, Decl.**
6 **of McFarland ¶2.**) The California State Grange is a California Non-Profit Corporation organized
7 under the laws of the State of California. (**See, Decl. of McFarland ¶3.**)

8 Pursuant to the California Corporations Code, all California Corporations must hold an annual
9 meeting. (**See, Cal. Corp. Code Section 600.**) The California State Grange has held its annual
10 meeting for 139 consecutive years. The annual meeting is a great way for the members of the
11 California State Grange to, among other things, get together and conduct their business affairs, vote on
12 corporate business, elect officers and spend some enjoyable time with fellow members of the
13 California State Grange. (**See, Decl. of McFarland ¶4.**)

14 At the 2011 annual meeting of the California State Grange, a majority of members voted to
15 hold the 140th Annual Meeting of the California State Grange at Little Lake Grange in Willets,
16 California from October 10-14 of 2012. Based on the vote of a majority of the California State Grange
17 members, the California State Grange actively promoted the 140th Annual Meeting to its Members,
18 their children and guests. (**See, Decl. of McFarland ¶5.**)

19 From June 1, 2012 to July 31, 2012, President McFarland served a voluntary suspension as a
20 result of actions that occurred in 2011. Upon returning from said voluntary suspension, on or about
21 August 1, 2012, National Grange Master Ed Luttrell attempted to suspend President McFarland
22 indefinitely for alleged actions during 2009. (**See, Decl. of McFarland ¶6.**) After receiving notice of
23 the new charges against President McFarland by National Grange Master Ed Luttrell, President
24 McFarland forwarded said charges to the Board of Directors of the California State Grange. (**See, Decl.**
25 **of McFarland ¶8.**)

26 Upon receipt of said charges, the Executive Committee held a meeting to review and discuss
27 the suspension and charges against President McFarland by National Grange Master Ed Luttrell. Four
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1 members, a quorum of directors, of the Executive Committee, were in attendance at the meeting: Jon
2 Luvaas, Damian Parr, Gerald Chernoff and Robert McFarland. (See, Decl. of McFarland ¶9-10.)

3 Based on the Executive Committee discussion and review it was moved by Member Jon
4 Luvaas, and seconded by Member Damian Parr, that the California State Grange Executive Committee
5 take the following positions:

- 6 a. That the California State Grange Executive Committee considered all charges alleged
7 by National Master Ed Luttrell against California State Grange Master Bob McFarland
8 on August 1, 2012 *and finds no cause to suspend the California State Grange Master*
9 *based upon those charges.*
- 10 b. *That the Executive Committee does not recognize any authority for Master Luttrell to*
11 *suspend the California State Grange Master* because Grange law prohibits any action
12 under Grange law contrary to the laws of the land governing our Grange. Under the
13 California Corporations Code governing our Grange, no body other than the members
14 who elected a corporate director may remove that director from office.
- 15 c. *That the Executive Committee does not recognize Overseer Martha Stefenoni as the*
16 *Acting Master of the California State Grange* because Master McFarland's suspension
17 by the National Master was unlawful under both Grange and California law and because
18 she has a conflict of interest.
- 19 d. *That the Executive Committee does not recognize Master Luttrell's authority to*
20 *suspend the California State Grange Charter* because doing so is contrary to the laws
21 of the State of California governing our California Corporation.
- 22 e. *That the Executive Committee demands a cessation of harassment by the National*
23 *Master against the California State Grange and its duly elected corporate directors.*
- 24 f. That, in any action taken by this Executive Committee, the officers or members of the
25 Grange, or the National Master, the Executive Committee reserves the rights of the
26 California State Grange to defend itself under Grange law and the laws of our state and
27 nation.

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1 g. *That the Annual Meeting (Convention) of the members of our nonprofit mutual*
2 *benefit corporation will proceed on schedule*, as required by the California
3 corporations Code. (See, Decl. of McFarland ¶11.) [Emphasis added]

4 Based on the California State Grange Executive Committee's refusal to honor National Master
5 Ed Luttrell's wrongful suspension, National Grange Master Luttrell, attempted to unilaterally cancel the
6 California State Grange's Annual Meeting. (See, Decl. of McFarland ¶12.)

7 As of close of business Tuesday October 2, 2012, the California State Grange had 189
8 members and delegates registered to attend. These costs are paid by the individual members and
9 delegates in advance. Additionally, the attendees purchase advance meal tickets for \$75.00 per adult
10 and \$40.00 per child. These costs have already been paid. Further, our members must pay for their own
11 lodging which runs between \$75.00 and \$110.00 for lodging per night. To date, the members and
12 delegates have spent in excess of \$35,000.00, which is non-refundable, in order to attend the annual
13 meeting. (See, Decl. of McFarland ¶13.)

14 In addition to the registration price, the California State Grange budgeted approximately
15 \$10,000.00 of its general fund for this annual meeting. This money is used to pay for additional
16 support staff for the annual meeting, as well as having contracted guest speakers and entertainers to
17 attend said annual meeting. (See, Decl. of McFarland ¶14.)

18 Should the Court have granted Plaintiffs', ex parte request on October 3, 2012 to enjoin the
19 Executive Committee and myself from performing our functions, then all of the registered
20 guests would have been out of pocket approximately \$35,000 and the California State Grange out an
21 additional \$10,000.00. That would have been a non-refundable expenditure and quasi-forfeiture of
22 approximately \$50,000.00 by a California non-profit corporation and its members. (See, Decl. of
23 McFarland ¶15.) Fortunately this Court denied the ex parte request.

24 Compounding the economic harm to the California State Grange is the harm caused to the
25 goodwill and public sentiment of the California State Grange, as well as the negative publicity caused
26 by this last-minute attempt of "cancellation by fiat" of the annual meeting of the California State
27 Grange by Plaintiff Luttrell. (See, Decl. of McFarland ¶16.)

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1 Even after the Court denied Plaintiff's motion for a temporary restraining order, National
2 Grange Master Ed Lutrell, by and through agents of the National Grange, has continued to contact
3 members of the California State Grange and inform them that if representatives from local Grange
4 chapters are "anywhere near" the annual meeting, such action will be seen as "disrespecting" the
5 National Grange and it will put the assets of such local Grange chapters in peril, such that the National
6 Grange may seek to seize the local Grange chapters Grange hall. Additionally the National Grange has
7 been informing local chapters of the California State Grange that no business of the California State
8 Grange may be conducted at this meeting, and should any business be conducted such business will be
9 null and void. (See, Decl. of McFarland ¶17.)

10 Plaintiff National Grange has further instructed members, officers and directors of the
11 California State Grange that they are to hold any monies raised from auctions and other fund raising
12 events at the annual meeting until the funds can be turned over to the National Grange. (See, Decl. of
13 McFarland ¶18.)

14 *To date, the National Grange has suffered no irreparable harm.* The California State Grange
15 collects dues from its members on a quarterly basis. A portion of said quarterly dues is paid to the
16 National Grange. On or about August 1, 2012, after returning from a voluntary suspension, President
17 McFarland oversaw the quarterly payment to the National Grange, which was accepted. The California
18 State Grange is current on its payments to the National Grange. Further, as an officer of a California
19 Corporation, President McFarland has a duty to oversee the day to day operations of the Corporation,
20 ensure that the Corporation's taxes are filed, that the Corporation's bill are paid, that employee payroll
21 is paid and that other Corporate matters are conducted in a timely, efficient, and legal manner. (See,
22 Decl. of McFarland ¶19.)

23 Finally, based on the Plaintiff's actions to date, the only irreparable harm that will be inflicted
24 by the issuance of a preliminary injunction is to a California Corporation and to its members. (See,
25 Decl. of McFarland ¶20.)

26 Therefore, defendant McFarland respectfully requests that the Court deny Plaintiff's request for
27 a preliminary injunction, in order to preserve the status quo until this matter may be heard on its merits.

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II. LAW AND ARGUMENT

A. GRANTING A PRELIMINARY INJUNCTION WILL MATERIALLY IMPACT THE STATUS QUO IN A NEGATIVE MANNER

It is black letter law that the purpose of a preliminary injunction is to preserve the status quo pending a trial on the merits. (*Continental Baking Co. v. Katz* (1968) 68 Cal. 2d 512, 528.) The California State Grange is incorporated under the laws of California and has operated as a California Corporation since its incorporation in 1946. (See, Decl. of McFarland ¶3 and Exhibit B.) In acting as a corporation, the California State Grange has an elected Board of Directors to oversee its corporate governance and act on behalf of the corporation. (See, Decl. of McFarland ¶3 and Exhibit B Section 12.) The Board of Directors is comprised of 5 elected members: Jon Luvaas, Inger Bevans, Shirley Baker, Buzz Chernoff and Damian Parr. (See, Decl. of McFarland ¶10.)

The President, Mr. McFarland, oversees the day to day operations of the business and has a duty to ensure that the Corporation's taxes are filed, that the bills of the Corporation bill are paid, that employee payroll is paid and that other Corporate matters are conducted in a timely, efficient, and legal manner. (See, Decl. of McFarland ¶19.) Since first being elected in 2009 President McFarland has encouraged the most rapid expansion in founding Grange Chapters, increased Grange membership, and assisted in the day to day operations of the California State Grange. (*Id.*)

Now, Plaintiff National Grange seeks to interfere with and effectuate a complete corporate restructuring of the California State Grange without the consent of the elected directors of the corporation. After reviewing and discussing National Master Ed Luttrell's complaints against defendant President McFarland, the board found the claims lacked merit and refused to remove their acting President. (See, Decl. of McFarland ¶11.) In response, the plaintiff has suspended the California State Grange's charter, attempted to cancel the California State Grange's Annual Meeting, and now seeks to enjoin the elected directors of a California Corporation from fulfilling their sworn duties.

By seeking a complete change of management and a turnover of all of the California State Grange's assets and passwords from its duly elected officers to out-of-state agents of the National Grange, in addition to a complete cessation of all California State Grange activities, plaintiff Luttrell

1 seeks to turn the status quo on its head. (See, Decl. of Ed Luttrell ¶3-4. In support of Ex Parte
2 Application for TRO.)

3 Further, Luttrell fails to cite any recognizable harm to the National Grange on which to base this
4 extraordinary affirmative relief, besides the fact that the California State Grange retained legal counsel
5 after he suspended their duly elected President. (See, Decl. of Ed Luttrell ¶ 3-5 ; ¶20.) Based on the
6 foregoing, plaintiff National Grange is requesting that the Court remove duly elected corporate officers
7 from a California Corporation and put in place out-of-state officers selected by an out-of-state
8 corporation based on what is essentially a contractual dispute. Nothing could be further from the status
9 quo.

10 Therefore, plaintiff National Grange's Motion for Preliminary Injunction should be denied.

11 **B. PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION SHOULD BE DENIED**
12 **AS IT DOES NOT PRESENT ANY FACTUAL ALLEGATIONS THAT SHOW IT**
13 **WILL PREVAIL ON THE MERITS NOR THAT IT WILL SUFFER FROM**
14 **IRREPARABLE INJURY SHOULD A PRELIMINARY INJUNCTION BE GRANTED**

15 A party requesting an injunction must show both: (1) the likelihood of its prevailing on the
16 merits of the dispute; and (2) the harm it will suffer absent an injunction outweighs the injury the
17 opposing party will suffer if the injunction is issued. (*Shoemaker v. County of Los Angeles* (1995) 37
18 *Cal.App.4th* 618, 625.) The moving party must prevail on both factors to obtain an injunction.
19 (*Sahlolbei v. Providence Healthcare, Inc.* (2003) 112 *Cal.App.4th* 1137, 1145.)

20 **1. Plaintiff Has Failed To Show It Will Prevail On The Merits**

21 Plaintiff has failed to show that it will prevail on the merits of the dispute. The present dispute
22 is essentially an out-of-state corporation, attempting to remove an officer of a California Corporation.
23 Pursuant to California Corporations Code section 7213 an officer of a California Corporation serves at
24 the pleasure of the Board of Directors. (See, Cal. Corp. Code Section 7213(a) and (b).)

25 It is well settled law that the affairs of a California Corporation are governed by its board of
26 directors. Section 12 of the Articles of Incorporation of the California State Grange provides that there
27 will be five (5) directors appointed to act on behalf of the corporation. (See, Decl. of McFarland
28 ¶3 and Exhibit B Section 12.) Upon receiving notice of suspension defendant McFarland referred the

1 matter to the board of directors of the California State Grange. (See, Decl. of McFarland ¶8.) With
2 three of the five directors present at a meeting, they discussed the suspension “ordered” by National
3 Master Ed Luttrell and passed the following resolution:

- 4 a. That the California State Grange Executive Committee considered all charges brought
5 by National Master Ed Luttrell against California State Grange Master Bob McFarland
6 on August 1, 2012 and finds no cause to suspend the California State Grange Master
7 based upon those charges.
- 8 b. That the Executive Committee does not recognize any authority for Master Luttrell to
9 suspend the California State Grange Master because Grange law prohibits any action
10 under Grange law contrary to the laws of the land governing our Grange. Under the
11 California Corporations Code governing our Grange, no body other than the members
12 who elected a corporate director may remove that director from office.
- 13 c. That the Executive Committee does not recognize Overseer Martha Stefenoni as the
14 Acting Master of the California State Grange because Master McFarland’s suspension
15 by the National Master was unlawful under both Grange and California law and because
16 she has a conflict of interest.
- 17 d. That the Executive Committee does not recognize Master Luttrell’s authority to suspend
18 the California State Grange Charter because doing so is contrary to the laws of the State
19 of California governing our California Corporation.
- 20 e. That the Executive Committee demands a cessation of harassment by the National
21 Master against the California State Grange and its duly elected corporate directors.
- 22 f. That, in any action taken by this Executive Committee, the officers or members of the
23 Grange, or the National Master, the Executive Committee reserves the rights of the
24 California State Grange to defend itself under Grange law and the laws of our state and
25 nation.
- 26 g. That the Annual Meeting (Convention) of the members of our nonprofit mutual benefit
27 corporation will proceed on schedule, as required by the California corporations Code.
28 (See, Decl. of McFarland ¶11.)

1 Based on the fact that 3 of the 5 directors of the corporation were present at the meeting, a
2 quorum existed and the actions of the board of directors were legal and binding. Plaintiff has offered
3 no authority that an out of state corporation has standing to remove either an officer of a California
4 Corporation or a director of the same. Thus, defendant President McFarland has not been removed by
5 the board of directors and remains the duly elected president of the California State Grange.
6 Therefore, Plaintiff has failed to make a showing that it will be successful on the merits.

7 **2. Plaintiff Has Failed To Show That It Will Be Irreparably Harmed If No Injunction**
8 **Is Issued And On The Other Hand, Defendants Will Be Irreparably Harmed If An**
9 **Injunction Is Granted.**

10 In evaluating interim harm, the trial court compares the injury to the plaintiff in the absence of
11 an injunction against the injury the defendant is likely to suffer if an injunction is issued. (*IT Corp. v.*
12 *County of Imperial*, (1983) 35 Cal.3d 63, 69-70.) In the present matter, plaintiff has not demonstrated
13 any harm should a preliminary injunction not be issued. However, the injury to the defendants
14 McFarland and California State Grange in this matter would be severe.

15 The California State Grange collects dues from its members on a quarterly basis. A portion of
16 said quarterly dues is paid to the National Grange. On or about August 1, 2012, after returning from a
17 voluntary suspension, defendant President McFarland oversaw the quarterly payment to the National
18 Grange, which was accepted. At the date of this writing, the California State Grange is current on its
19 payments to the National Grange. Further, as an officer of a California Corporation, Mr. McFarland
20 has a duty to oversee the day to day operations of the Corporation, ensure that the Corporation's taxes
21 are filed, that the Corporation's bills are paid, that employee payroll is paid and that other Corporate
22 matters are conducted in a timely, efficient, and legal manner. (See, Decl. of McFarland ¶19.)

23 In order to execute the day to day operations of the California State Grange, the defendant has a
24 full time staff of employees. Plaintiffs seek to enjoin not only defendant McFarland but all employees
25 of the California State Grange from conducting their daily employment activities. (See, Plaintiff's Ex
26 Parte Application for Temporary Restraining Order p. 2, lines 3-8.) Should the Court grant the
27 relief plaintiff seeks, it would amount to the constructive discharge of the employees of a California
28 Corporation by an out-of-state corporation.

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1 Plaintiff National Grange is attempting to interfere with the lawful activity of a California
2 Corporation. After the Court denied plaintiff's motion for a temporary restraining order, Ed Lutrell by
3 and through agents of the plaintiff has contacted members of the California State Grange and informed
4 them that if representatives from local Grange chapters are "anywhere near" the annual meeting, such
5 action will be seen as disrespecting the National Grange and it will put the assets of such local Grange
6 chapters in peril, such that the National Grange may seek to seize the local Grange chapters Grange
7 hall. Additionally the National Grange has been informing local chapters of the California State
8 Grange that no business of the California State Grange may be conducted at this meeting, and should
9 any business be conducted such business will be null and void. (See, Decl. of McFarland ¶17)

10 Plaintiff has further instructed members, officers and directors of the California State Grange
11 that they are to hold any proceeds raised from auctions and other fund raising events at the annual
12 meeting until the funds can be turned over to the National Grange. (See, Decl. of McFarland ¶18.) A
13 portion of the monies raised from the auctions and quarterly dues paid to the California State Grange is
14 paid directly to the National Grange in the form of quarterly dues. For the Plaintiff to go out and
15 proactively request that clubs not pay their dues is illustrative of the type of conduct that will occur
16 should the Court cede control of the California State Grange over to the Plaintiff by granting this
17 request for a preliminary injunction.

18 Therefore, should a preliminary injunction be granted the harm to the defendant will far
19 outweigh any harm to the plaintiff.

20 3. Plaintiff's Injunction Seeks To Curtail Defendant's Right To Free Speech

21 Free speech is protected under both the First Amendment and Art. I, § 2 of the California
22 Constitution. California's provisions are "more protective, definitive and inclusive of rights to
23 expression of speech than their federal counterparts." (*San Diego Unified Port Dist. v. U.S. Citizens*
24 *Patrol* (1998) 63 CA4th 964, 970.) As part of his request for a Preliminary Injunction, Plaintiff
25 requests that the Court restrain defendant President McFarland from acting in his capacity as President
26 of a California Corporation. (See, Declaration of Ed Lutrell ¶3.) The basis for this request is that
27 defendant President McFarland has harmed the National Grange by providing written communication
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1 about National Master Luttrell's charges to the members of the California State Grange. (See, Exhibit
2 D and ¶17 of Decl. of Ed Luttrell.)

3 In essence, the National Grange is seeking to interfere with a duly elected officer of a
4 California Corporation so as to prevent him communicating verbally or in writing to the members he
5 represents. Although plaintiff argues that Mr. Luttrell's authority as Master of the National Grange
6 trumps defendant McFarland's right to communicate with the members of the California State Grange,
7 this has not been shown legally and/or factually.

8 All members of the National Grange take an oath that states in part that they will conform to
9 and abide by the laws of my state and nation. An individual's right to freedom of speech is not only
10 protected under both state and federal law, but is also a fundamental right of our Constitutional
11 Republic. For an out-of-state corporation to attempt to curtail the freedom of speech of a duly elected
12 officer of a California Corporation is in violation of both the law of California and of the United States
13 of America. Thus plaintiff's request for a preliminary injunction must be denied.

14 III. CONCLUSION

15 Based on the foregoing, plaintiff's motion for preliminary injunction must fail as it does not
16 preserve the status quo. Additionally plaintiff has failed to show it will be meritorious on its claims or
17 that there exists irreparable harm to plaintiff should a preliminary injunction not be issued. Finally, by
18 seeking an order restraining a duly elected officer of a California Corporation from communicating
19 with members of that corporation is a per se violation of defendant McFarland's constitutional right to
20 free speech. Therefore, defendant President McFarland respectfully requests that the Court deny
21 plaintiff's motion for preliminary injunction in its entirety.

22 Dated: 10/10/12

ELLIS LAW GROUP, LLP

23 By: 
24 _____

25 William A. Lapcevic
26 Attorneys for Defendant
27 ROBERT MCFARLAND
28

CERTIFICATE OF SERVICE

I, Maria Gutierrez, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is 555 University Avenue, Suite 200, Sacramento, CA 95825.

On October 3, 2012, I served the following document(s) on the parties in the within action:

DEFENDANT ROBERT MCFARLAND'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

| | |
|----------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | VIA ELECTRONIC SERVICE: The above-described document(s) will be delivered electronically through the Court's ECF/PACER electronic filing system, as stipulated by all parties to constitute personal service, to the following: |
| X | BY MAIL: I am familiar with the business practice for collection and processing of mail. The above-described document(s) will be enclosed in a sealed envelope, with first class postage thereon fully prepaid, and deposited with the United States Postal Service at Sacramento, CA on this date, addressed as follows: |
| | BY HAND: The above-described document(s) will be placed in a sealed envelope which will be hand-delivered on this same date by _____, addressed as follows: |
| | VIA FACSIMILE: The above-described document(s) was transmitted via facsimile from the fax number shown on the attached facsimile report, at the time shown on the attached facsimile report, and the attached facsimile report reported no error in transmission and was properly issued from the transmitting facsimile machine, and a copy of same was mailed, on this same date to the following: |
| X | VIA E-MAIL: The above-described document(s) will be delivered by e-mail, to the following: |
| Martin N. Jensen Porter Scott 350 University Avenue, Suite 200 Sacramento, CA 95825 mjensen@porterscott.com dganzon@porterscott.com | Attorneys for Plaintiff THE NATIONAL GRANGE OF THE ORDER OF PATRONS OF HUSBANDRY |

I declare under penalty of perjury under the laws of the State of California that the foregoing is a true and correct statement and that this Certificate was executed on October 3, 2012.

By: _____

Maria Gutierrez