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THE NATIONAL GRANGE OF THE ORDER OF PATRONS OF HUSBANDRY

FILED  
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12 OCT 12 PH 3:04

LEGAL PROCESS #4

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

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

Plaintiff,

vs.

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

Defendants.

**REPLY IN SUPPORT OF PLAINTIFF'S  
MOTION FOR PRELIMINARY  
INJUNCTION**  
[Code Civ. Proc., §§ 526, 527]

Date: October 17, 2012

Time: 2:00 p.m.

Dept: 53

Complaint Filed: October 1, 2012

**INTRODUCTION**

Under California law, a corporation is governed through its bylaws and articles of incorporation. A nonprofit corporation has the broad power to organize itself through its bylaws in a great variety of possible forms, and may delegate control to other organizations. (Corp. Code, § 7040, subd. (j).) The California State Grange is a chartered division of the National Grange and has agreed to delegate control to that organization. Defendants conspicuously neglect any analysis, or even acknowledgment, of the key bylaws and other foundational governing documents of the California State Grange itself, which Plaintiff has already cited in its moving papers. In those governing documents, the California State Grange expressly and unambiguously adopts

1 the Constitution and bylaws of the National Grange as its supreme law. Specifically, in Article II of the  
2 Constitution of the California State Grange, it states:

3       The State Grange, as a **chartered division of the National Grange**, shall have the right and  
4       power, as the good of the Order requires, to adopt laws for the organization, administration and  
5       regulation of the affairs of the various divisions of the State Grange, including laws limiting,  
6       defining and regulating the powers of the various Granges of the divisions of the State Grange,  
7       **so long as they do not conflict with the laws of the National Grange.**

8 (Exhibit C to Plaintiff's Ex Parte Application; emphasis added.) Thus, in no meaningful sense can the  
9 California State Grange be deemed an independent or autonomous corporation free to act in disregard of the  
10 National Grange, since it would thereby violate its own internal governing documents. By operating under its  
11 exclusive Charter, the California State Grange recognizes in its bylaws the authority of the National Grange  
12 over the Order. (See attached Declarations of former Masters of the California State Grange Clouse and Lewis)

13       Tacitly conceding that the California State Grange has clearly adopted the governing provisions of the  
14 National Grange, Defendants must resort to a stilted and unprecedented assertion about California corporations,  
15 without the support of any viable legal authority. The central thrust of Defendants' opposition to the motion  
16 for preliminary injunction appears to be the Corporations Code does not specify that a foreign nonprofit  
17 corporation may ever remove an officer of a California corporation without concurrence of the latter's board  
18 of directors. Defendants, however, disingenuously ignore provisions of those very statutes that emphasize the  
19 corporate bylaws may override the statutory default. Specifically, Corporations Code section 7213, subdivision  
20 (b), states in pertinent part:

21       **"Except as otherwise provided by the articles or bylaws, officers shall be chosen by the**  
22       **board and serve at the pleasure of the board, subject to the rights, if any, of an officer under**  
23       **any contract of employment."** (Emphasis added.)

24       In any event, it is important to note that the National Grange has merely "suspended," not "removed,"  
25 McFarland from his role as Master. As noted previously, McFarland has in the past been suspended but  
26 returned to his term as Master. While duly suspended, he is not to exercise the authority of the office of Master.

27       Moreover, the ultimate question at stake is simply whether the National Grange has the authority under  
28 the clear bylaws of both organizations to "suspend" the Charter of the California State Grange. McFarland and  
several members of the Executive Committee have rejected the authority of the National Grange to suspend

1 McFarland as Master. Defendants vastly overstate the effect of this action to suspend the Charter of the  
2 California State Grange, which is now the status quo. Again, Plaintiff is not moving for dissolution of the  
3 California State Grange as a corporate entity or to remove an officer or a member of its board of directors. The  
4 National Grange does not seek to shut down all activity of the California State Grange and end all employment  
5 by the State Grange, but merely to establish separate interim lines of authority so that the business of the  
6 California State Grange can proceed. The bylaws of the State Grange expressly contemplate such a situation.

7 A rejection of the requested relief sought by Plaintiff would amount to a rejection of the internal  
8 governing documents of the National Grange and its chartered divisions, which have operated under such rules  
9 for more than a century. Allowing the California State Grange to act with impunity in defying the rules of the  
10 Order risks severe damage to the entire structure of the Order.

11 Additional harm would likely result from the impairment of the National Grange's right to protect the real  
12 property belonging to the Order, as recognized in the bylaws. (Exhibit B to Plaintiff's Ex Parte Application,  
13 ¶ 4.12.2) Finally, allowing the California State Grange to continue to function without a Charter would risk  
14 serious confusion to the trademark and other intellectual property rights of the Order, also recognized in the  
15 National Grange By-Laws. (Exhibit B to Plaintiff's Ex Parte Application, ¶ 4.18)

16 Finally, Defendants' argument that the National Grange has no standing or basis to seek a preliminary  
17 injunction here is without merit. No statute or case authority precludes the National Grange from seeking to  
18 have the clear bylaws of the California State Grange (and hence the National Grange) enforced pending trial.  
19 In fact, the opposite is true as statutory and case authority permits nonprofit organizations, including  
20 corporations, wide latitude to delegate control to other organizations. Defendants have not set forth any contrary  
21 interpretations of the bylaws, but merely pretend that the bylaws it tacitly concedes as unfavorable do not exist.

## 22 LEGAL ARGUMENTS

### 23 I. PLAINTIFF IS LIKELY TO PREVAIL ON THE MERITS BECAUSE THE BYLAWS OF 24 BOTH THE CALIFORNIA STATE GRANGE AND THE NATIONAL GRANGE AUTHORIZE SUSPENSION OF THE STATE CHARTER.

25 Defendants' entire argument against a preliminary injunction hinges upon the proposition that  
26 California law prevents a California corporation from following its own internal rules, which defer to the  
27 authority of a foreign corporation. This proposition is demonstrably false. The California Corporations Code

1 broadly and unambiguously provides that a California corporation's bylaws may cede authority to another  
2 entity, regardless of whether or not the California corporation is a "subsidiary" or "division" of the parent  
3 organization. There is no talismanic effect from the particular wording. Specifically, Corporations Code  
4 section 7040 provides in pertinent part:

5 Subject to any limitations contained in the articles or bylaws and to compliance with other  
6 provisions of this division and any other applicable laws, a corporation, in carrying out its  
7 activities, shall have all of the powers of a natural person, including, without limitation, the  
8 power to:

9 (b) Adopt, amend, and repeal bylaws;

(j) Participate with others in any partnership, joint venture or other association, transaction or  
arrangement of any kind whether or not such participation involves sharing or delegation of  
control with or to others.

10 The articles and bylaws of the California State Grange do not in any manner limit its ability to delegate control  
11 to the National Grange. On the contrary, the Constitution of the California State Grange expressly confirms  
12 its own power to enact laws for itself and its subordinate Granges as long as such laws do not conflict with the  
13 laws of the National Grange. (Article II, quoted above)

14 Defendants cannot dispute the historical fact that McFarland has been suspended as Master in the recent  
15 past by the Master of the National Grange. Importantly, Defendants admit that section 14.13 of the California  
16 State Grange Bylaws permits suspension of the Master. (California State Grange Opposition, 4:19-20) Oddly,  
17 Defendants assert that section 14.13 does not itself spell out who may undertake the action of suspension, yet  
18 section 14.13 express states that "the suspension procedure shall be as provided for in the By-Laws of the  
19 National Grange and in accordance with the Rules and Regulations for Trials." The By-Laws of the National  
20 Grange clearly establish that the Master of the National Grange may suspend the Master of a State Grange.  
21 (Exhibit B to Plaintiff's Ex Parte Application, ¶ 4.10.7(B)(1)) That same provision of the National Grange By-  
22 Laws spell out the internal trial process, including the due process procedures to which a suspended Master is  
23 entitled, and that the Overseer of the State Grange will temporarily act as Master of the State Grange during  
24 any suspension. McFarland and the Executive Committee have refused to recognize the recent suspension and  
25 have refused to recognize the Overseer as the acting State Grange Master. This is in stark contrast to the  
26 previous suspension of McFarland for failing to follow Grange law, when the California State Grange  
27 recognized the authority of the Overseer as acting Master.

1 In light of the foregoing, it is difficult to understand what Defendants mean in asserting that the bylaws  
2 of the National Grange are not incorporated by reference into the bylaws of the California State Grange. It  
3 could not be more clear that the authority of the National Grange is acknowledged by the California State  
4 Grange in its own bylaws. Defendants also inexplicably suggest that any language giving the National Grange  
5 the authority to remove an officer would be unenforceable under California law. (California State Grange  
6 Opposition, 4:26-5:6) Again, Defendants cite Corporations Code section 7213, but omit any reference to  
7 subdivision (b) of that statute (quoted above), which expressly permits a California Corporation to cede control  
8 through its bylaws, as occurred here.

9 Finally, Defendants assert that the National Grange does not have the right to suspend the Charter of  
10 the California State Grange. No authority supports such an assertion.<sup>1</sup> Indeed, as provided by California law  
11 (Corp. Code, § 7040, subd. (j)), the California State Grange through Article II of its Constitution (quoted above)  
12 has accepted the authority of the National Grange, which includes in its bylaws the authority to suspend the  
13 Charter of a State Grange. (Exhibit B to Plaintiff's Ex Parte Application, ¶ 4.5.7)

14 II. REQUIRING THE CALIFORNIA STATE GRANGE TO FOLLOW ITS OWN BYLAWS  
15 AND THOSE OF THE NATIONAL GRANGE IS NOT SIMPLY A INTERVENTION IN A  
16 CONTRACT DISPUTE FOR WHICH PLAINTIFF SEEKS SPECIFIC PERFORMANCE.

17 Although corporate bylaws, like all laws, resemble contracts in that they are, by definition, the product  
18 of agreement among certain parties, they constitute more broadly the governing rules of the corporation. These  
19 rules are binding upon all parties who interact with the corporation, not merely those who initially agreed to  
20 the enactment of the bylaws. Defendants cite to no authority suggesting that enforcement of corporate bylaws  
21 is the same as merely enforcing the terms of a contract between the parties to that agreement.

22 To the extent Defendants suggest that the bylaws are insufficiently certain to be enforced by a court,  
23 they are incorrect. Indeed, Defendants do not even attempt to argue that the pertinent cited bylaws of the  
24 California State Grange and the National Grange are too ambiguous to be enforced.

25 Instead, Defendants set forth meaningless distinctions regarding the case authorities upon which Plaintiff relies.

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26 <sup>1</sup> Defendants' citation to *Robinson v. SSW, Inc.* (2012) 2012 WL 4235441, 2012 Cal.App. LEXIS 996, is inapposite. That  
27 case simply discusses whether a foreign state's statute limiting the time to sue a dissolved corporation applies in California.  
28 It nowhere suggests that whether a California corporation's operations may be suspended is determined by California  
statutory law regardless of the bylaws of the corporation.

1 Although the cited cases do not deal with the particular procedural context of preliminary injunctions, the  
2 evaluation of the merits of the clear meaning of the bylaws is identical to the court's task here.

3 Initially, Defendants concede that in *Hard v. California State Employees Assn.* (2003) 112 Cal.App.4th  
4 1343, the moving party (CSD) was entitled to bring suit against CSEA because CSEA refused to recognize a  
5 right clearly set forth in its own bylaws. So here, the National Grange is simply requesting the court to enforce  
6 upon the California State Grange its own bylaws, which expressly recognize and delegate to the National  
7 Grange the authority to suspend the Master and Charter of a State Grange. Defendants do not suggest any basis  
8 upon which the National Grange's request fails to meet any aspect of *Hard's* tripartite test. (*Id.* at p. 1347.)  
9 First, Defendants point to no bylaws that would make their interpretation of the bylaws reasonable. That is to  
10 say, where the bylaws of the California State Grange explicitly recognize the supremacy of National Grange's  
11 laws, they point to no bylaws that indicate any alternative interpretation. Second, Defendants do not suggest  
12 that enforcement of the clear bylaws involve any arcane rule within the peculiar knowledge of the California  
13 State Grange. Finally, Defendants do not proffer any rituals or customs of the California State Grange that  
14 would somehow interfere with the enforcement of its own written bylaws. Moreover, the interests of the  
15 National Grange in maintaining the structural integrity of the Order in the face of Defendants' baseless defiance  
16 outweigh the burden on the judiciary in deciding this narrow question of whether the bylaws should be  
17 enforced. The court is not being asked to determine the truth of the substantive charges made against  
18 McFarland, but instead Plaintiff insists that such findings are for the internal procedures of the California State  
19 Grange and the National Grange. The autonomy of both private organizations will be protected thereby.

20 Likewise, *California Dental Assn. v. American Dental Assn.* (1979) 23 Cal.3d 346 supports Plaintiff's  
21 contention that California courts will step in to enforce bylaws that govern the relations between a national  
22 association and its subordinate state association. As Defendants inadvertently concede, the corporate status  
23 and location of the two private organizations is irrelevant. The only question that mattered was whether the  
24 ADA applied its own bylaws in an unreasonable manner. The ADA and CDA each had their own governing  
25 laws, but they were not in conflict. The ADA bylaws stated that it would apply stricter state organization  
26 ethical standards, but the ADA declined to do so. So here, there is no conflict between the provisions of the  
27 California State Grange bylaws and those of the National Grange. Indeed, the bylaws are in harmony, but  
28 Defendants simply refuse to follow them.

1 Defendants engage in circular logic by contending that the Board of Directors validly authorized the  
2 California State Grange to disregard the suspension of McFarland as Master. In so doing, the Executive  
3 Committee failed to follow the bylaws of the California State Grange and National Grange. A board of  
4 directors has no power to openly defy its own bylaws. The sole power the board of directors retains in the face  
5 of bylaws it opposes is to seek to have them duly amended. (Corp. Code, § 7150.) This did not occur.

6 While it is generally true that the board of directors may act on behalf of the California corporation,  
7 their actions are constrained by the corporate bylaws, which require the California State Grange to adhere to  
8 the bylaws and authorized decision of the National Grange. An action does not become lawful simply because  
9 authorized by the Board of Directors.<sup>2</sup> It is clear that action was taken by the Executive Committee to hire  
10 counsel on September 5, 2012, not the Board of Directors meeting regarding corporate business. Although the  
11 terms Executive Committee and Board of Directors can be used interchangeably (Exhibit B to Plaintiff's Ex  
12 Parte Application, ¶ 4.10.1(A)) and the members were the same persons, McFarland should not have been  
13 permitted to count as the fourth person present to constitute a quorum for the Executive Committee vote. He  
14 boasts of the same four actual votes by the California State Grange Executive Committee in favor of a  
15 resolution of support for McFarland dated September 25, 2012, which occurred after the suspension of the  
16 Charter. (See Exh. D to McFarland Declaration in opposition to preliminary injunction) Of course, the present  
17 issue has nothing to do with the substance of the charges against McFarland, but the vote demonstrates  
18 Defendants' lack of concern for due process in corporate governance, despite their protestations to the contrary.

19 III. THE POTENTIAL HARM TO PLAINTIFF OUTWEIGHS THE POTENTIAL HARM TO  
20 DEFENDANTS RESULTING FROM A PRELIMINARY INJUNCTION.

21 Unless a preliminary injunction is issued, Plaintiff faces serious harm from Defendants ongoing  
22 conduct. First, open defiance of the Order by disregard of the bylaws will likely invite other subordinate  
23 entities to consider such actions, causing a systemic breakdown of the basic structure of the organization.  
24 Second, real property rights of the Order cannot be protected from dissipation if the unchartered State Grange

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26 Despite Defendants' claim, Plaintiff does not rely on Corporations Code sections 5132 (based upon the initial  
27 representation of Defendants' counsel that the California State Grange was a public benefit corporation) or 7132 to justify  
28 its suspension of the Charter, but merely to illustrate that California law does not prohibit an outside organization from even  
dissolving a California corporation, a much harsher outcome.

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REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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1 is permitted continued control over such assets, and unsuspecting third purchasers may face confusion of title.  
2 Third, trademark and intellectual property rights belonging to the Order will likewise also be unprotected and  
3 a source of great confusion to the public.

4 It must first be recognized the status quo is that the Charter of the California State Grange has been duly  
5 suspended by the National Grange under the bylaws of both organizations. Defendants cannot rewrite the  
6 history of what has already occurred. Defiantly, Defendants insist they retain the right to continue to conduct  
7 the business of the Order. What is clear is that the status quo position does not revert back prior to August 1,  
8 2012, before McFarland was suspended as Master and the Charter suspended. The National Grange does not  
9 seek to alter the status quo, merely enforce it. The National Grange requests the court to prohibit Defendants  
10 from engaging in official Grange business while the Charter of the California State Grange is suspended.<sup>3</sup> Nor  
11 does the National Grange plan to operate the business of the California State Grange from Washington, D.C.  
12 Rather, if a preliminary injunction is granted, the Master of the National Grange would appoint Robert Clouse,  
13 a former State Grange master, to ensure that the assets of the California State Grange are not removed or  
14 dissipated pending trial and that the financial and organizational obligations are met during the suspension.

15 Defendants endeavor to have it both ways when analyzing the potential harm resulting from a  
16 preliminary injunction precluding the California State Grange from conducting official transactions while the  
17 Charter remains suspended. Defendants minimize the possibility that the California State Grange might  
18 improperly enter into binding contracts while its Charter remains suspended, but at the same time claim that  
19 the California State Grange will somehow lose over \$5 million in assets if it is precluded from conducting  
20 Grange business until after trial is conducted regarding this dispute.

21 Stated another way, if the California State Grange is doing so much official business that \$5 million in assets  
22 would be endangered by a preliminary injunction, then there is a large risk that innocent third parties who  
23 would do official business with the California State Grange absent an injunction would be harmed or confused  
24 by learning that the Charter of the State Grange had been suspended. The National Grange would also be

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26 The request that Defendants be required to turn over keys and passwords is not a seizure of the California State Grange's  
27 assets, but merely a collateral measure to ensure that official Grange business is not conducted. This power of the national  
28 Grange Master to act broadly for the good of the Order is authorized by section 4.5.7 of the National Grange By-Laws,  
especially to avoid dissipation of the real property of the Order, as set forth in section 4.12.2 of those same bylaws.



1 harmed by facing potential liability from those who executed contracts with the California State Grange  
2 following the suspension of its Charter. It is also difficult to imagine how the National Grange could  
3 reasonably function in the future if the California State Grange, or any State Grange, is freely permitted to  
4 conduct Grange business without a valid Charter. One of the particular areas of concern is the management  
5 of real property belonging to the California State Grange while its Charter has been suspended. (See attached  
6 Declaration of Edward L. Luttrell, paragraph 7) The obvious potential for harm to the National Grange is  
7 considerable if real property were to be sold off to innocent third parties while the Charter of the State Grange  
8 remained suspended. There is also the potential for significant harm to trademarks belonging to the Order if  
9 the California State Grange is permitted to continue operating officially even while suspended. (See attached  
10 Declaration of Edward L. Luttrell, paragraph 5)

11 Conspicuously, McFarland's declaration does not indicate how or why any of the assets of the  
12 California State Grange would likely be harmed if official business of the State Grange is halted pending trial.  
13 Thus, there are no grounds to require a bond be posted to protect the California State Grange from irreparable  
14 losses of assets if precluded from conducting official business pending trial.

#### 15 CONCLUSION

16 For all the foregoing reasons the preliminary injunction should be granted. Plaintiff is likely to succeed  
17 on the merits at trial because Defendants suggest nothing to contradict the clear bylaws authorizing suspension  
18 of McFarland as Master and the corresponding suspension of the Charter of the California State Grange. The  
19 potential for harm to the National Grange and third parties is immense if Defendants are not prohibited from  
20 conducting official Grange business pending trial.

21 Date: October 12, 2012

PORTER SCOTT  
A PROFESSIONAL CORPORATION

22 By \_\_\_\_\_  
23

Martin N. Jensen  
Thomas L. Riordan

1 **Re: National Grange, et al. v. Bob McFarland**  
2 **Case No: Sacramento County Superior Court 34-2012-00130439**

3  
4 **DECLARATION OF SERVICE**

5 I am a citizen of the United States and a resident of Sacramento County, California. I am over  
6 the age of eighteen years and not a party to the within above-entitled action. My business address is  
7 350 University Avenue, Suite 200, Sacramento, California.

8 I am familiar with this Company's practice whereby the mail, after being placed in a  
9 designated area, is given the appropriate postage and is deposited in a U. S. mailbox in the City of  
10 Sacramento, California, after the close of the day's business.

11 On October 12, 2012, I served a copy of the following document(s):

12 **REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

13 on all parties in the said action as addressed below by causing a true copy thereof to be:

14 **Attorneys for Robert McFarland**

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18 ☒ **By Mail.** I caused such envelope with postage thereon fully prepaid to be placed in the United  
19 States mail at Sacramento, California.

20 ☐ **By Personal Service.** I caused such document to be delivered by hand to person(s) listed  
21 below.


22 ☐ **By Overnight Delivery.** I caused such document to be delivered by overnight delivery to the  
23 office of the person(s) listed below.

24 ☐ **By Facsimile.** I caused such document to be transmitted by facsimile machine to the office  
25 of the person(s) listed below.

26 ☒ **By E-Mail.** I caused such document to be transmitted by electronic format to the office of  
27 the person(s) listed below.

28 I declare under penalty of perjury that the foregoing is true and correct.

Executed at Sacramento, California on October 12, 2012.

  
Desiree Ganzon