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THE NATIONAL GRANGE OF THE ORDER OF PATRONS OF HUSBANDRY

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LEGAL PROCESS #6

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.

THE CALIFORNIA STATE GRANGE, a
California nonprofit,

Cross-Complainant,

vs.

THE NATIONAL GRANGE OF THE ORDER OF
PATRONS OF HUSBANDRY, a Washington,
D.C. nonprofit corporation, and
EDWARD L. LUTTRELL, an individual, and
ROES 1 through 10, inclusive,

Cross-Defendants.

Case No. 34-2012-00130439

**NATIONAL GRANGE'S AND EDWARD L.
LUTTRELL'S MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
DEMURRER TO EACH OF THE CAUSES OF
ACTION IN THE CROSS-COMPLAINT**

[Code Civ. Proc., §§ 430.10, 430.30, 430.50]

Date: May 14, 2013

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RESERVATION #1786378

**NATIONAL GRANGE'S AND EDWARD L. LUTTRELL'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF DEMURRER TO EACH OF THE CAUSES OF ACTION IN THE CROSS-COMPLAINT**

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1 INTRODUCTION

2 Cross-Defendants The National Grange of the Order of Patrons of Husbandry (hereafter the
3 "National Grange") and Edward L. Luttrell, who serves as Master, or President, of the National Grange,
4 demur to the allegations of the cross-complaint set forth by the California State Grange for failure to set forth
5 facts stating a cause of action as to each of the six causes of action. Although the cross-complaint attempts
6 to avoid acknowledging the inseparable interrelationship between the National Grange and the California
7 State Grange, the bylaws of the two have already been filed in this action and make clear that the California
8 State Grange is actually a constituent part of the National Grange, also referred to as the "Order." The court
9 is requested to take judicial notice of these bylaws. The bylaws of both related organizations establish that
10 the bylaws and decisions of the National Grange have supremacy over those of the California State Grange,
11 although thorough internal appeal procedures are built into the bylaws. There is no basis for individual
12 liability against Luttrell.

13 Where independent private organizations, such as the Order, have their own internal rules, California
14 state law cautions the judiciary not to become involved in deciding substantive disagreements within the
15 organization. It is only where clear bylaws are disregarded by a party to them that the courts have a role, but
16 again the court's jurisdiction should be strictly limited to requiring the parties to follow the bylaws by which
17 they are governed. The causes of action alleged by the California State Grange in the instant cross-complaint,
18 however, do not seek to require the National Grange to adhere to the specific language of any of the bylaws.
19 On the contrary, the State Grange improperly seeks to involve the court in the internal question of whether
20 the bylaws may be interpreted so as to prevent the National Grange from directing dues payments away from
21 the State Grange, whose charter has been duly suspended under those same bylaws. This dispute can be
22 adjudicated initially within the Order's internal judicial procedures. By contrast, the National Grange has
23 sought in this case to compel the State Grange to follow the clear bylaws regarding suspension of its Master
24 and its own charter, which actions are both exclusively authorized by the bylaws. The California State
25 Grange has expressly asserted that as a California corporation it is not bound at all by the bylaws authorizing
26 the National Grange to suspend its Master and charter, and the National Grange refuses to submit to the
27 Order's written procedures for adjudicating internal disputes.

1 In any event, none of the six causes of action alleged in the cross-complaint sets forth facts sufficient
2 to state a cause of action. Indeed, the alleged facts and those available to the court through judicial notice
3 preclude as a matter of law any of the alleged causes of action from proceeding forward. The allegations
4 against Luttrell as an individual in the second and third causes of action are particularly inappropriate and
5 without any factual support whatsoever. The demurrer must be sustained regarding Luttrell as cross-
6 defendant, including the sixth cause of action for declaratory relief.

7 Stated succinctly, there can be no conversion of money without a distinct sum for a particular
8 account. Second, there can be no tortious interference with contract against the National Grange, because
9 to the extent the bylaws can be deemed to encompass valid contracts between the California State Grange
10 and Subordinate Granges to pay dues, the National Grange was also a party to such contracts. Luttrell cannot
11 be liable since he is alleged to have acted in his capacity as president of the National Grange. Likewise,
12 neither the National Grange nor Luttrell can be liable for intentional interference with prospective economic
13 advantage arising from the obligations to pay dues involving the Subordinate Granges, the State Grange and
14 the National Grange. In any event, the tortious conduct alleged is not otherwise unlawful. Fourth, the
15 National Grange cannot be liable for unfair competition under section 17200 of the Business and Professions
16 Code because it is not an independent competitor of the State Grange, and in any event did not engage in
17 improper anti-competitive conduct by suspending the Charter of the California State Grange. Fifth, unjust
18 enrichment is not an independent cause of action, but rather is a restitution remedy for quasi-contract
19 inapplicable to the alleged circumstances. Finally, declaratory relief cannot be awarded in favor of the State
20 Grange where the court
21 should not exercise jurisdiction over a substantive dispute over conflicting interpretations of the bylaws.

22 **FACTUAL BACKGROUND**

23 For purposes of this demurrer only, cross-defendants the National Grange and Luttrell assume as true
24 the following factual allegations set forth by the California State Grange and their corresponding paragraph
25 number. The California State Grange has existed since 1873 and is an incorporated nonprofit organization,
26 which has numerous subordinate units within it. (¶ 6) The Subordinate Granges pay annual dues to the State
27 Grange, of which some portion is then paid over to the National Grange. (¶ 7) In September 2012, the

1 National Grange and Luttrell required that the Subordinate Granges pay the entirety of their dues to the
2 National Grange, rather than directly to the State Grange, or face suspension from the Order. (§ 8) At the
3 direction of Luttrell, the National Grange has established an alternative website to that maintained by the
4 State Grange, and the National Grange has denied the authority of the California State Grange to continue
5 to act on behalf of the Subordinate Granges. (§ 9) The National Grange is trying to take over the State
6 Grange and seize its property after purporting to suspend it and its elected Master. (§ 10) The National
7 Grange instructed the Subordinate Granges not to attend the State Grange annual meeting and prevented
8 State Grange members from participating in the National Grange's annual meeting. (§ 10) The National
9 Grange has erroneously claimed that its governing documents empower it to act on behalf of the California
10 State Grange upon suspension of the latter's Charter. (§ 11)

11 Through judicial notice, the bylaws of the California State Grange and the National Grange
12 demonstrate the organizational interrelationship of the parties, especially concerning the National Grange's
13 authority to suspend the State Grange, as well as the payment of dues. The National Grange's request for
14 judicial notice attaches those portions of the respective bylaws most pertinent to the issues on demurrer.

15 JURISDICTION

16 The court should not exercise subject matter jurisdiction at all over the substantive factual claims
17 alleged by the California State Grange's cross-complaint. The California Supreme Court explained the
18 narrowly limited role of the judiciary regarding the internal rules of private associations, such as the Grange.
19 Specifically, *California Dental Assn. v. American Dental Assn.* (1979) 23 Cal.3d 346, 353-354, stated:

20 As was recognized in *Dingwall v. Amalgamated Assn. etc.* (1906) 4 Cal.App. 565, 569 [88
21 P. 597], "the rights and duties of the members as between themselves and in their relation
22 to [a private voluntary] association, in all matters affecting its internal government and the
23 management of its affairs, are measured by the terms of [its] constitution and by-laws." (See
24 also *Stoica v. International etc. Employees* (1947) 78 Cal.App.2d 533, 535-536 [178 P.2d
25 21].) In many disputes in which such rights and duties are at issue, however, the courts may
26 decline to exercise jurisdiction. Their determination not to intervene reflects their judgment
27 that the resulting burdens on the judiciary outweigh the interests of the parties at stake. One
28 concern in such cases is that judicial attempts to construe ritual or obscure rules and laws of
private organizations may lead the courts into what Professor Chafee called the "dismal
swamp." (Chafee, *The Internal Affairs of Associations Not for Profit* (1930) 43 Harv.L.Rev.
993, 1023-1026.) Another is with preserving the autonomy of such organizations. (Note,
Developments in the Law – Judicial Control of Actions of Private Associations (1963) 76
Harv.L.Rev. 983, 990-991.)

1 As the California State Grange itself acknowledges in the cross-complaint (§§ 10, 11), the instant
2 dispute stems from the National Grange's position that the applicable bylaws and other internal governing
3 rules of the Order authorized the suspension of the Charter of the State Grange, and that the court should
4 therefore not undertake to adjudicate the substantive disputes raised by the parties. The bylaws themselves
5 provide specific procedural mechanisms within the organization for adjudicating the facts surrounding
6 disputes about the interpretation and application of the bylaws. The court should not exercise subject-matter
7 jurisdiction here. It is crucial to appreciate the significant distinction between the National Grange's
8 complaint and the California State Grange's cross-complaint. By the former pleading, the National Grange
9 requests the court to exercise its well-established role of requiring the California State Grange to follow its
10 own clear bylaws and those of the National Grange, the application and validity of which is not disputed by
11 the parties. The bylaws require use of the internal procedures of the Order to adjudicate disputes arising from
12 the bylaws, including an express provision in paragraph 4.5.8 for appeal from suspension of a state grange
13 charter, as here. (RJN, Exh. A)

14 In the cross-complaint, however, the California State Grange asks the court to determine whether
15 certain entities should receive some indefinite portion of the dues, which is a particular substantive area
16 encompassed by the respective bylaws of the Organization and subject to the specified internal procedures
17 set forth therein for adjudicating disputes under the bylaws. Indeed, Article II of the Constitution of the
18 California State Grange states:

19 The State Grange, as a **chartered division of the National Grange**, shall have the right and
20 power, as the good of the Order requires, to adopt laws for the organization, administration
21 and regulation of the affairs of the various divisions of the State Grange, including laws
22 limiting, defining, and regulating the powers of the various Granges of the divisions of the
State Grange, **so long as they do not conflict with the laws of the National
Grange.**(Emphasis added.)

23 Thus, it is clear that the activities of the California State Grange under its Charter are necessarily
24 interconnected with the laws of the National Grange, which are supreme within the organization. The instant
25 demurrer should be sustained against the cross-complaint in its entirety. Nevertheless, the reason for
26 sustaining the demurrer against each of the cross-complaint's causes of action is set forth below.

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LEGAL ARGUMENTS

“[A] complaint otherwise good on its face is subject to demurrer when facts judicially noticed render it defective.” (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6; Code Civ. Proc., § 430.30; subd. (a).) A demurring party thus may request the court to take judicial notice of the existence of certain documents that have already been filed in court. (Evid. Code, § 452, subd. (d); *Gilbert v. Cal.* (1990) 218 Cal.App.3d 234, 240-241 & fn. 5.) Accompanying this demurrer, the National Grange has requested that the court take judicial notice of the existence of portions of the Constitutions, articles of incorporation and bylaws of both the National Grange and the California State Grange, which have already been filed in this same action with our initial complaint, and are thus already court records.

I. THE CROSS-COMPLAINT FAILS TO SET FORTH FACTS SUFFICIENT TO STATE A CAUSE OF ACTION FOR CONVERSION AGAINST THE NATIONAL GRANGE.

The first cause of action alleged by the California State Grange is for conversion against the National Grange alone. The cross-complaint alleges Grange dues that would have been paid to the California State Grange were improperly diverted from Subordinate Granges by the National Grange. Some dues were allegedly simply withheld by the Subordinate Granges at the urging of the National Grange. (§ 8) *Heaps v. Heaps* (2004) 124 Cal.App.4th 286, 292, defines the tort as follows: “Conversion exists if there is substantial interference or ‘an exertion of wrongful dominion over the personal property of another in denial of or inconsistent with his rights therein.’ (*George v. Bekins Van & Storage Co.* (1949) 33 Cal.2d 834, 837.)”

As alleged, the only personal property supposedly taken by the National Grange from the control of the State Grange was unspecified sums of money voluntarily paid by a number of Subordinate Granges (§§ 13, 14), but a “generalized claim for money is not actionable as conversion. (5 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 614, p. 710.)” (*Vu v. California Commerce Club, Inc.* (1997) 58 Cal.App.4th 229, 235.) *Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 284, explains as follows:

A cause of action for conversion of money can be stated only where a defendant interferes with the plaintiff's possessory interest in a specific, identifiable sum, such as when a trustee or agent misappropriates the money entrusted to him. “Money cannot be the subject of a cause of action for conversion unless there is a specific, identifiable sum involved, such as where an agent accepts a sum of money to be paid to another and fails to make the payment. [Citation.]” (*McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1491.)

1 Even putting aside the alleged fact that Subordinate Granges paid the dues to the National Grange on the
2 basis that the Charter of the State Grange had been suspended under the bylaws (§§ 8, 10), thus negating the
3 notion of misappropriation, there are no identifiable sums here. As alleged by the State Grange, the National
4 Grange normally receives an unspecified "portion" of the dues initially paid by the Subordinate Granges in
5 any event (§ 7), but that amount has presumably increased so as to finance performance the functions no
6 longer authorized by the State Grange following suspension of their Charter. It would be impossible to
7 calculate how much personal property rightfully belonging to the State Grange was wrongfully diverted.
8 There is thus no basis to grant the State Grange leave to amend regarding the tort of conversion.

9 II. THE CROSS-COMPLAINT FAILS TO SET FORTH FACTS SUFFICIENT TO STATE
10 A CAUSE OF ACTION FOR TORTIOUS INTERFERENCE WITH CONTRACT
AGAINST THE NATIONAL GRANGE AND LUTTRELL.

11 As an initial matter, it is important to note that the cross-complaint does not anywhere set forth the
12 elements or terms of any actual contracts between the California State Grange and the Subordinate Granges.
13 Instead, the State Grange vaguely alludes to unspecified bylaws requiring the Subordinate Granges to pay
14 dues to the California State Grange (§ 21). Although there are some narrow contexts in which corporate
15 bylaws are treated as contractual promises, as when an investor buys shares in reasonable reliance upon the
16 bylaws defining the nature of those shares (see *De Boni Corp. v. Del Norte Water Co.* (2011) 200
17 Cal.App.4th 1163, 1170), bylaws do not have many of the necessary features of civil contracts. (See *O'Byrne*
18 *v. Santa Monica-UCLA Medical Center* (2001) 94 Cal.App.4th 797, 810.) Specifically, if the State Grange
19 here were to fail to perform some duty required under the bylaws, Subordinate Granges could not sue the
20 State Grange in court for breach of contract. Instead, the remedy for violation of bylaws is contained in the
21 bylaws themselves, and can be adjudicated internally within the Order. Thus, there can be no tort for
22 interfering with the bylaws in this context.

23 Moreover, even if the court were to deem the relationship between the California State Grange and
24 the Subordinate Granges to be akin to a contractual relationship, based on the bylaws, there could be no
25 liability against the National Grange because it is a party to the same contract. The National Grange is not
26 a separate third party. To the extent the National Grange is effectively a party to the contract with which it
27 has allegedly interfered, there can be no tort liability against the National Grange. Even where a plaintiff has

1 alleged a conspiracy involving a defendant who was party to the contract in issue, the California Supreme
2 Court has held there can be no tort liability against that defendant. Specifically, *Applied Equipment Corp.*
3 *v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 514, reminds that “consistent with its underlying policy
4 of protecting the expectations of contracting parties against frustration by outsiders who have no legitimate
5 social or economic interest in the contractual relationship, the tort cause of action for interference with
6 contract does not lie against a party to the contract.” Of course, Edward Luttrell as an individual is not a
7 party to the alleged contract in any meaningful respect, but cannot be liable for tortious interference either.
8 Luttrell is not named separately in the text (as opposed to heading) of the second cause of action of the cross-
9 complaint, but paragraph 3 alleges that Luttrell as “an officer of National Grange . . . personally participated
10 in and directed the tortious conduct alleged herein on behalf of National Grange.” Luttrell did not act
11 independently. As such, Luttrell cannot be personally liable for interfering with a contract to which his
12 employer is a party. (*Klein v. Oakland Raiders* (1989) 211 Cal.App.3d 67, 81.)

13 Besides the text of the cross-complaint itself specifying that under the applicable bylaws Subordinate
14 Grange dues are split between the California State Grange and the National Grange (§ 7), the text of the
15 bylaws submitted as part of the National Grange’s request for judicial notice further elucidates the
16 interconnection. The prominent role of the National Grange is acknowledged in the California State
17 Grange’s own bylaws, as well as those of the National Grange. For example, in discussing the authority of
18 the California State Grange to suspend a Subordinate Grange for failure to pay dues, the bylaws of the
19 California State Grange expressly provide: “3.2 Appeal - The Grange whose Charter is suspended or revoked
20 may appeal such action to the Master of the National Grange as provided in the By-Laws of the National
21 Grange.” (RJN, Exh. B) Indeed, paragraph 10.4 of the California State Grange bylaws focuses specifically
22 on the role of the National Grange, expressly providing: “National Grange Per Capita Dues or Assessment
23 – Whenever the National Grange increases the per capita tax or adds any assessment to the State Grange,
24 it shall be up to the discretion of the Delegate body to raise the annual per capita tax to all Subordinate
25 Grange members.”

26 Indeed, the Constitution of the National Grange, which the California State Grange expressly
27 recognizes as the supreme law of the Order, specifically delineates the National Grange’s crucial role

1 regarding organizational dues. Paragraph 1.6.1 states: "The qualifications for membership; procedure for
2 attaining membership; membership dues; and the right to vote in each of the Granges of the divisions of the
3 Order shall be provided for in the By-Laws of the National Grange." (RJN, Exh. A) Paragraph 1.7.2 then
4 states: "The By-Laws of the National Grange shall provide for a minimum amount of such application fees
5 and membership dues. The collection of such funds and the apportionment thereof to the various Granges
6 of the divisions of the Order shall be provided for in the By-Laws of the National Grange." The bylaws of
7 the National Grange further integrate the National Grange into the process of enforcing the collection of
8 dues. The Master of the State Grange may suspend or revoke the Charter of a Subordinate Grange that is
9 delinquent in paying its dues (§ 4.5.1(C)), but the National Grange retains an important oversight role.
10 According to paragraph 4.5.2 of the National Grange bylaws: "If a Master of a State Grange suspends or
11 revokes a Charter said Master shall report such action to the Master of the National Grange along with the
12 reasons of the Master for taking such action." Paragraph 4.5.3 then implicates the appeal procedures
13 established by the National Grange as follows: "Junior, Subordinate or Pomona Granges whose Charters are
14 suspended or revoked may appeal such action to the Master of the National Grange pursuant to Section
15 12.1.5 of the Code of Judicial Law as adopted by the National Grange."

16 In sum, the demurrer must be sustained without leave to amend regarding the second cause of action.
17 Even if the court were to refrain from doing so, it should nevertheless strike the request for punitive damages
18 (§ 24) pursuant to the accompanying motion, because punitive damages may not be awarded regarding
19 contractual breaches. (*PM Group, Inc. v. Stewart* (2007) 154 Cal.App.4th 55, 69.)

20 III. THE CROSS-COMPLAINT FAILS TO SET FORTH FACTS SUFFICIENT TO STATE
21 A CAUSE OF ACTION FOR INTENTIONAL INTERFERENCE WITH PROSPECTIVE
ECONOMIC ADVANTAGE AGAINST THE NATIONAL GRANGE AND LUTTRELL.

22 Aware of the apparent weakness of its claim regarding the bylaws as contracts, the California State
23 Grange as an alternative theory alleges intentional interference with prospective economic advantage through
24 the same payment of dues. (§ 27) The elements of the tort of intentional interference with prospective
25 economic advantage are: (1) an economic relationship between [the plaintiff and some third person]
26 containing the probability of future economic benefit to the [plaintiff], (2) knowledge by the defendant of
27 the existence of the relationship, (3) intentional acts on the part of the defendant designed to disrupt the

1 relationship, (4) actual disruption of the relationship, [and] (5) damages to the plaintiff proximately caused
2 by the acts of the defendant. (*Buckaloo v. Johnson* (1975) 14 Cal.3d 815, 827.) The same basic rationale set
3 forth above to precludes liability against parties for tortious interference with a contract is applied in
4 California law to a claim for intentional interference with prospective economic advantage. (*Kasparian v.*
5 *County of Los Angeles* (1995) 38 Cal.App.4th 242, 262.) *Kasparian* examined the reasoning employed by
6 the California Supreme Court in *Applied Equipment Corp., supra*, regarding actual contracts and held that
7 the closeness of the two interference torts means that “the same rationale should also bar prosecution of the
8 tort of interference with prospective economic advantage against a party to the relationship from which the
9 plaintiff’s anticipated economic advantage would arise.” (38 Cal.App.4th at p. 262.) It would be incongruous
10 to have liability against a defendant for interference with mere prospective economic advantage, but not the
11 more formal contractual relationship that otherwise receives more protection under California law. (*Id.* at
12 p. 266.) The Ninth Circuit Court of Appeals has also recognized that for each of the business torts only a
13 stranger to the economic relationship can be liable. (*Marin Tug & Barge, Inc. v. Westport Petroleum, Inc.*
14 (9th Cir. 2001) 271 F.3d 825, 832.)

15 Luttrell would also necessarily be shielded from liability for this tort. His alleged conduct was solely
16 on behalf of the National Grange, not for his own benefit. *Kasparian* likewise implicitly extended the
17 protection from liability even to general partners within a joint venture, which was is the actual “party” to
18 a prospective economic relationship. (*Id.* at p. 248.) There is no factual or legal basis upon which to
19 distinguish Luttrell’s actions from that of the National Grange. As a consequence, Luttrell cannot be liable
20 for the tort.

21 Even if the court were to decline application of the *Kasparian* rule, there would still be no grounds
22 for liability against the National Grange for intentional interference with prospective economic advantage,
23 because the cross-complaint does not allege that the intentional interference, even if for a selfish motive, was
24 independently unlawful. Paragraph 29 of the cross-complaint alleges that the wrongful conduct was
25 “fraudulently coercing the payment of dues from the Subordinate Granges to the National Grange, instead
26 of the California Grange.” No specific alleged facts, however, suggest what the conclusory term
27 “fraudulently coercing” means in this context governed by organizational bylaws. The California Supreme

1 Court in *Della Penna v. Toyota Motor Sales, U.S.A.* (1995) 11 Cal.4th 376, 392-393, held that “a plaintiff
2 seeking to recover for alleged interference with prospective economic relations has the burden of pleading
3 and proving that the defendant's interference was wrongful ‘by some measure beyond the fact of the
4 interference itself.’” The Supreme Court subsequently refined that standard, explaining that “an act is
5 independently wrongful if it is unlawful, that is, if it is proscribed by some constitutional, statutory,
6 regulatory, common law, or other determinable legal standard.” (*Korea Supply Co. v. Lockheed Martin*
7 *Corp.* (2003) 29 Cal.4th 1134, 1158-1159.) The same analysis would apply to both the National Grange and
8 Luttrell. Incorrect interpretation of bylaws cannot be deemed unlawful.

9 The use of the term “fraudulently” by the California State Grange in its cross-complaint is merely
10 a conclusion of law without factual content, and it hinges completely upon the interpretation of the bylaws.
11 “We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or
12 conclusions of fact or law.” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) In the context of the entire cross-
13 complaint, it can be inferred by the court that the fraud was nothing other than the National Grange
14 exercising its authority under the bylaws. Merely stating that some “coercive” activity was “fraudulent”
15 requires specificity of pleading, which is completely lacking here. “In California, fraud must be pled
16 specifically; general and conclusory allegations do not suffice.” (*Lazar v. Superior Court* (1996) 12 Cal.4th
17 631, 645.) Moreover, the conduct that is allegedly “coercive” must also be illegal in order for the elements
18 of the tort to be met. (*San Francisco Design Center Associates v. Portman Companies* (1995) 41
19 Cal.App.4th 29, 42.) Here, what the California State Grange vaguely terms “coercive” is conduct expressly
20 authorized for the National Grange by the bylaws. Again, the substantive determination of whether the
21 National Grange was correct or mistaken in its interpretation of the bylaws must be conducted through the
22 internal procedures established by those very same bylaws. Here, it does not ultimately matter whether or
23 not the bylaws are deemed separate “contracts.” The central issue for purposes of this cause of action is that
24 the cross-complaint fails to allege violation of any independent legal standard rendering the National
25 Grange’s conduct independently unlawful.

1 IV. THE CROSS-COMPLAINT FAILS TO SET FORTH FACTS SUFFICIENT TO STATE
2 A CAUSE OF ACTION FOR UNFAIR COMPETITION AGAINST THE NATIONAL
3 GRANGE.

4 As an initial matter, there is no basis to find anti-competitive conduct between two constituent parts
5 of the same organization. They are not competitors. Since the National Grange and the California State
6 Grange are both parts of the Order governed by the same bylaws, there can be no statutory finding of unfair
7 competition over the dues paid by the Subordinate Granges, which are also bound by the same bylaws. The
8 Subordinate Granges cannot choose whether to pay dues to either the National Grange or the State Grange,
9 since the bylaws of the Order determine how payments are to be made.

10 Moreover, the cross-complaint simply relies on the previously alleged facts to assert in paragraph
11 34 that the conduct of the National Grange was "unfair, unlawful and/or fraudulent and constitutes unfair
12 competition under the California Business and Professions Code section 17200." While that statute has been
13 interpreted broadly as to term "unfair," its scope is not limitless. The alleged "unfairness" does not
14 necessarily have to be unlawful under section 17200, but in the context of allegedly harming a business
15 competitor, as here, the California Supreme Court has required "any finding of unfairness to competitors
16 under section 17200 be tethered to some legislatively declared policy or proof of some actual or threatened
17 impact on competition." (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20
18 Cal.4th 163, 186-187.) Explaining further, the court required "conduct that threatens an incipient violation
19 of an antitrust law, or violates the policy or spirit of one of those laws because its effects are comparable to
20 or the same as a violation of the law, or otherwise significantly threatens or harms competition." (*Id.* at p.
21 187.) There can be no such facts alleged here.

22 The cross-complaint as pled lacks any factual allegations going to antitrust or anti-competitive effects
23 within the meaning of federal law. (*Watson Labs., Inc. v. Rhone-Poulenc Rorer, Inc.* (C.D. Cal. 2001) 178
24 F. Supp. 2d 1099, 1119.) Again, the State Grange cannot amend its pleadings to remedy this deficiency
25 because there were no consumers harmed by the dispute over dues under the bylaws. The Subordinate
26 Grange must pay dues as required under the bylaws; they are not free to choose between the National Grange
27 and the California State Grange as competitors in providing a service. The Subordinate Granges belong
28 simultaneously to the National Grange and the State Grange, but the latter has been suspended under the

1 bylaws.

2 V. THE CROSS-COMPLAINT FAILS TO SET FORTH FACTS SUFFICIENT TO STATE
3 A CAUSE OF ACTION FOR UNJUST ENRICHMENT AGAINST THE NATIONAL
4 GRANGE.

5 Unjust enrichment is not considered a separate and independent cause of action under California law.
6 It is merely a restitution remedy under quasi-contract. (*Levine v. Blue Shield of California* (2010) 189
7 Cal.App.4th 1117, 1138.) Because the California Grange does not allege that it provided some particular
8 service for which the National Grange improperly collected the proceeds, the demurrer should be sustained
9 to this untethered pleading. (See *Peterson v. Celco Partnership* (2008) 164 Cal.App.4th 1583, 1593.) Again,
10 the court has no proper role in adjudicating the substantive merits of this dispute between the National
11 Grange and the California State Grange, two interrelated parts of a private organization governed by bylaws,
12 because the bylaws clearly establish internal procedures to serve that function.

12 VI. THE CROSS-COMPLAINT FAILS TO SET FORTH FACTS SUFFICIENT TO STATE
13 A CAUSE OF ACTION FOR DECLARATORY RELIEF AGAINST THE NATIONAL
14 GRANGE AND LUTTRELL.

15 As previously explained, the disputes between the National Grange and the California State Grange
16 are all within the scope of the bylaws of the Order and must be internally adjudicated thereunder. Whether
17 the State Grange is authorized to continue operations and collection of dues under the bylaws is beyond the
18 jurisdiction of the court. Since there is no proper jurisdictional basis for the court to declare in favor of the
19 California State Grange, a demurrer is proper. (See *Jones v. Daly* (1981) 122 Cal.App.3d 500, 511.)

19 **CONCLUSION**

20 For all the foregoing reasons, the court must sustain the demurrer without leave to amend.
21 The California State Grange has failed to allege facts sufficient to state a cause of action and there is no
22 reasonable possibility that the State Grange could so allege facts in light of the bylaws of the Order. (*Cooper*
23 *v. Leslie Salt Co.* (1969) 70 Cal.2d 627, 636.)

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1 Date: December 21, 2012

PORTER SCOTT
A Professional Corporation

2
3 By Thomas L. Riordan
4 Martin N. Jensen
5 Thomas L. Riordan
6 Attorneys for Plaintiff and Cross-Defendants
7 THE NATIONAL GRANGE OF THE ORDER
8 OF PATRONS OF HUSBANDRY
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3 **DECLARATION OF SERVICE**

4 I am a citizen of the United States and a resident of Sacramento County, California. I am over the
5 age of eighteen years and not a party to the within above-entitled action. My business address is 350
6 University Avenue, Suite 200, Sacramento, California. I am familiar with this Company's practice whereby
the mail, after being placed in a designated area, is given the appropriate postage and is deposited in a U.
S. mailbox in the City of Sacramento, California, after the close of the day's business.

7 On December 21, 2012, I served a copy of the following document(s):

8 **NATIONAL GRANGE'S AND EDWARD L. LUTTRELL'S MEMORANDUM OF POINTS
9 AND AUTHORITIES IN SUPPORT OF DEMURRER TO EACH OF THE CAUSES OF
ACTION IN THE CROSS-COMPLAINT**

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

11 **Attorneys for Robert McFarland**

12 Mark Ellis
13 Ellis Law Group
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**Attorneys for Defendants The California State
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17 ☒ **By Mail.** I caused such envelope with postage thereon fully prepaid to be placed in the United States
mail at Sacramento, California.

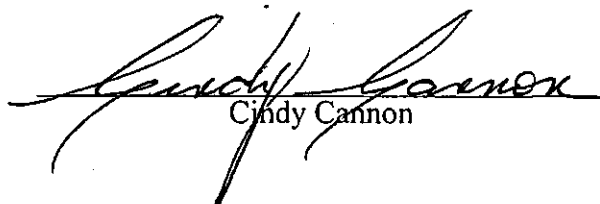
18 ☐ **By Personal Service.** I caused such document to be delivered by hand to person(s) listed below.

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

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

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

24 I declare under penalty of perjury that the foregoing is true and correct. Executed at Sacramento,
California on December 21, 2012.

25
26 
27 Cindy Cannon

28 **NATIONAL GRANGE'S AND EDWARD L. LUTTRELL'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF DEMURRER TO EACH OF THE CAUSES OF ACTION IN THE CROSS-COMPLAINT**