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LEGAL PROCESS #6

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Attorneys for Plaintiff and Cross-Defendants
THE NATIONAL GRANGE OF THE ORDER OF PATRONS OF HUSBANDRY

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 MOTION TO STRIKE CLAIMS
FOR PUNITIVE DAMAGES IN THE CROSS-
COMPLAINT AND POINTS AND
AUTHORITIES SUPPORTING MOTION**

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

Date: May 14, 2013

Time: 2:00 p.m.

Dept.: 53

RESERVATION #1786378

**NATIONAL GRANGE'S AND EDWARD L. LUTTRELL'S MOTION TO STRIKE CLAIMS FOR PUNITIVE DAMAGES IN
THE CROSS-COMPLAINT AND POINTS AND AUTHORITIES SUPPORTING MOTION**

1 Cross-Defendants The National Grange of the Order of Patrons of Husbandry and Edward L. Luttrell
2 hereby move to strike the cross-complaint's allegations in paragraphs 24 and 31 (second and third causes
3 of action, respectively) regarding punitive damages, as well as the prayer therefor.

4 *PM Group, Inc. v. Stewart* (2007) 154 Cal.App.4th 55, 69, notes that "punitive damages are not
5 available in actions arising out of contract, including interference with contract. (*Applied Equipment Corp.*
6 *v. Litton Saudi Arabia Ltd., supra*, 7 Cal.4th at p. 516.)" There is likewise no basis to award punitive
7 damages stemming from the intentional interference with prospective economic advantage, which is deemed
8 less severe than tortious interference with an actual contract, since the contract has not yet been formalized.
9 (*Kasparian v. County of Los Angeles* (1995) 38 Cal.App.4th 242, 266.) Moreover, no unlawful conduct has
10 been alleged, let alone malice, fraud or oppression within the meaning of Civil Code section 3294. There
11 can be no punitive damages awarded where the only alleged basis for the tort was violation of bylaws. (See
12 *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1158-1159.)

13 Date: December 21, 2012

PORTER SCOTT
A Professional Corporation

14
15 By



Martin N. Jensen
Thomas L. Riordan
Attorneys for Plaintiff and Cross-Defendants
THE NATIONAL GRANGE OF THE ORDER
OF PATRONS OF HUSBANDRY

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 MOTION TO STRIKE CLAIMS**
9 **FOR PUNITIVE DAMAGES IN THE CROSS-COMPLAINT AND POINTS AND**
10 **AUTHORITIES SUPPORTING MOTION**

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

12 **Attorneys for Robert McFarland**

13 Mark Ellis
14 Ellis Law Group
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Grange, John Luvaas, Gerald Chernoff, and
Damian Parr

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17 ☒ **By Mail.** I caused such envelope with postage thereon fully prepaid to be placed in the United States
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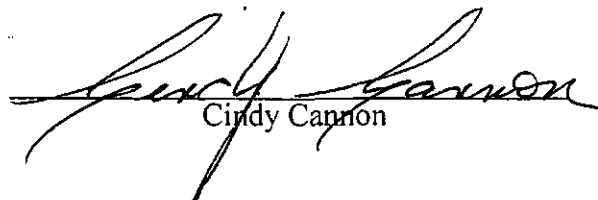
18 ☐ **By Personal Service.** I caused such document to be delivered by hand to person(s) listed below.

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 MOTION TO STRIKE CLAIMS FOR PUNITIVE DAMAGES IN**
THE CROSS-COMPLAINT AND POINTS AND AUTHORITIES SUPPORTING MOTION