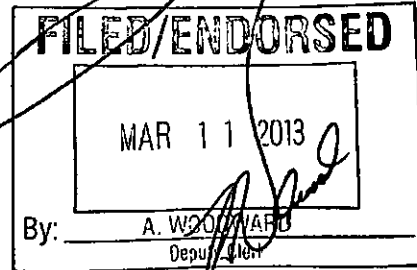


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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SACRAMENTO

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

16 Plaintiff,

17 v.

18 THE CALIFORNIA STATE GRANGE, a  
19 California nonprofit corporation, and ROBERT  
20 MCFARLAND, JOHN LUYAAS, GERALD  
21 CHERNOFF, and DAMINA PARR,

22 Defendants.

Case No.: 34-2012-00130439

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF EX  
PARTE APPLICATION FOR TEMPORARY  
RESTRAINING ORDER AND ORDER TO  
SHOW CAUSE RE PRELIMINARY  
INJUNCTION**

**DATE:** March 12, 2013

**TIME:** 9:00 a.m.

**DEPT:** 53

**Complaint filed:** October 1, 2012

**Trial Date:** None set

ORIGINAL

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## I. INTRODUCTION

This application by Defendant Robert McFarland (hereinafter "McFarland") is brought pursuant to **Code of Civil Procedure §§ 526 and 527** for an order to show cause and a temporary restraining order restraining Plaintiff, The National Grange of the Order of Patrons of Husbandry (hereinafter "The National Grange") from holding a "Grange Trial" on March 14, 2013, which will negatively affect and interfere with McFarland's rights and obligations under his current employment contract as President of California State Grange, a California corporation. A temporary restraining order is necessary to maintain the status quo of the operations of the California State Grange until this matter can be adjudicated on its merits at trial. By holding this "Grange Trial," the National Grange and its Master, Edward Luttrell (hereinafter "Luttrell") seek to interfere with McFarland's current employment contract, as well as the operations and management of a California corporation, and it attempts to achieve, through cronyism and a "kangaroo court," the relief which has been denied to the National Grange by the Superior Court.

In order to maintain the status quo of McFarland's present employment contract, McFarland requests that this Court enjoin any action taken by the National Grange and Luttrell that interferes with, and negatively impacts McFarland's rights and obligations under his current employment contract with the California State Grange until this matter can be adjudicated at trial.

## II. FACTUAL BACKGROUND

Defendant Robert McFarland is the elected Master and President of the California State Grange. (See Declaration of Robert McFarland (McFarland Decl.), ¶1.) The California State Grange is a corporation organized under the laws of California. (McFarland Decl., ¶ 2.) Based upon McFarland's position as elected President, he is under a two-year employment contract to manage the operation of the corporation. (*Id.*)

Based upon allegations initiated by Martha Stefenoni, Overseer of the California State Grange, Luttrell sent a letter to McFarland stating several presumed violations, and asked that the Executive Committee investigate such claims. (See McFarland Decl., ¶5.) The allegations included that a) McFarland purportedly falsified Charter and/or membership applications, (b) McFarland allegedly

1 attempted to seat unqualified delegates at the California State Grange sessions, and (c) McFarland  
2 purportedly attempted to harass and/or intimidate staff members. (*See Id.*)

3 The California State Grange Executive Committee at the time consisted of California State  
4 Grange Board of Directors (John Luvaas, Buzz Chernoff, Damian Parr, Inger Bevans, and Shirley  
5 Baker), and Officers Martha Stefenoni, Overseer, and Bob McFarland, President. (**McFarland Decl.,**  
6 ¶ 6.) After concluding its investigation, the California State Grange Executive Committee issued a  
7 report to the National Grange, concluding:

8 a) The mistakes made to Charter and membership applications (which solely consisted of  
9 two applications which had an incorrect date) were unintentional, and the result of a dysfunctional  
10 State Office through several administrations, where no employee or Master could be singled out as the  
11 cause. As part of the finding, the California State Grange Executive Committee included a plan for  
12 reorganization of the office in an attempt to correct the problem. It held that it did not find evidence of  
13 any intentional violation of Grange Law by McFarland or anyone else.

14 b) No evidence was found to support a charge that McFarland had approved or conspired  
15 to seat alternate delegates who were not qualified or who would somehow support his reelection. It  
16 concluded that it also did not find any supporting evidence that McFarland approved, solicited or  
17 conspired to seat alternate delegates for any other Grange in violation of Grange Law.

18 c) Finally on January 24, 2012, as part of its last report, The California State Grange  
19 Executive Committee concluded it had found no evidence of any wrongdoing or violation of Grange  
20 Law by McFarland based upon all allegations put forth for review. (**McFarland Decl., ¶ 6; Exhibit B**  
21 **to McFarland Decl.**)

22 Based on Luttrell's apparent dislike for McFarland, Luttrell ignored the findings of the  
23 Executive Committee and chose to accept an unverified, unofficial report from a minority of the  
24 Executive Committee, which was adverse to McFarland and contrary to the findings of the Executive  
25 Committee and the Board of Directors of the California State Grange. (**McFarland Decl., ¶ 7.**)

26 At or about the same time, McFarland was involved in a separate "Grange Trial." (**McFarland**  
27 **Decl., ¶ 8.**) That matter involved the California State Grange's decision on a consolidation of the  
28

1 Prunedale and Springfield Granges within the California State Grange. (**McFarland Decl.**, ¶ 8.) The  
2 charge in that proceeding requested that the “Grange Trial” overturn McFarland’s decision in the  
3 consolidation of the two Granges. (*Id.*) In order to proceed, McFarland paid approximately \$5,000,  
4 retained counsel and brought 6 witnesses from out of the area to testify in support of his defense. (*Id.*)  
5 The panel was selected and appointed by Luttrell. The panel heard only one witness, Ms. Stefenoni, to  
6 support the charges against McFarland. McFarland was not permitted to cross examine the witness. In  
7 McFarland’s case in chief, he only put on three witnesses before the “Grand Trial” panel cut him off,  
8 found him guilty and expelled him from the National Grange for life.<sup>1</sup> (*Id.*)

9 In an attempt to appease all parties, McFarland agreed to accept a two month suspension for  
10 any unintentional wrongs that occurred during his time as Master. McFarland served this voluntary  
11 suspension from June 1, 2012 to July 31, 2012. (**McFarland Decl.**, ¶ 9.)

12 During McFarland’s suspension as President of the California State Grange, Overseer Stefenoni  
13 became the acting Master, and she wasted no time sending out broadcast emails defaming McFarland  
14 and abusing her position by searching office records and interrogating California State Grange officials  
15 and attorneys in an attempt to solicit additional evidence against McFarland which she could bring to  
16 Luttrell to support additional charges.<sup>2</sup> (**McFarland Decl.**, ¶10.) Upon McFarland’s return on August  
17 1, 2012, Luttrell immediately suspended McFarland based upon the allegations in the minority report,  
18 and this time, he added other charges based upon McFarland’s involvement in a settlement agreement  
19 that had occurred in 2009, of which Luttrell was fully aware at the time it took place. (*See Id.*)

20 Based upon the past actions of Luttrell and Stefenoni, McFarland refused to accept the  
21 suspension as it was a clear attempt to remove him from his elected office and to interfere with his  
22 employment contract, contrary to the laws of California, and the laws of the Grange. (**McFarland**  
23 **Decl.**, ¶11.) The California Grange Board of Directors agreed with McFarland, and, based upon  
24

25 <sup>1</sup> The prayer for relief only requested that McFarland be overruled on his decision, but Luttrell’s elected panel went the  
extra mile and expelled McFarland for life.

26 <sup>2</sup> Interestingly, Ms. Stefenoni filed the complaint, testified against McFarland, and then reaped the rewards of his  
27 suspension.

1 discussions that followed the suspension, the Board agreed to take the following positions:

2 a) The California State Grange Executive Committee considered all charges brought by  
3 National Master Ed Luttrell against California State Grange Master Robert McFarland on August 1,  
4 2012 and found no cause to suspend the California State Grange Master based upon those charges.

5 b) The Executive Committee does not recognize any authority for Master Luttrell to  
6 suspend the California State Grange Master since Grange law prohibits any action contrary to the laws  
7 of the land governing our Grange. Under the California Corporations Code governing our Grange,  
8 nobody, other than the members who elected a corporate director, may remove that director from  
9 office.

10 c) The Executive Committee does not recognize Overseer Martha Stefenoni as the Acting  
11 Master of the California State Grange because Master McFarland's suspension by the National Master  
12 was unlawful under both Grange and California law, and because she has a conflict of interest.

13 d) The Executive Committee does not recognize Master Luttrell's authority to suspend the  
14 California State Grange Charter because doing so is contrary to the laws of the State of California  
15 governing our California corporation.

16 e) The Executive Committee demands a cessation of harassment by the National Master  
17 against the California State Grange and its duly elected-corporate directors.

18 f) In any action taken by this Executive Committee, the officers or members of the  
19 Grange, or the National Master, the Executive Committee reserves the rights of the California  
20 State Grange to defend itself under Grange law and the laws of our state and nation.

21 Due to the California State Grange Board of Directors' refusal to honor National Master  
22 Luttrell's suspension of McFarland, the National Grange suspended the California State Grange charter  
23 and all directors who sided with McFarland. Further, Luttrell attempted to cancel California State  
24 Grange's Annual Meeting, when 189 members and delegates had already registered to attend. (See  
25 **McFarland Decl.**, ¶11.) The National Grange gave continued instruction that the fund raising monies  
26 be held to be turned over to the National Grange. (*Id.*)

27 On or about February 11, 2013, the National Grange sent a letter to McFarland informing him  
28

1 that it would be conducting a "Grange Trial," and that the "Grange Trial" will adjudicate the  
2 allegations brought by Luttrell against McFarland. (See McFarland Decl., ¶ 17.) The panel that will  
3 adjudicate the matter has once again been selected and appointed by Luttrell. (*Id.*) Further,  
4 McFarland was informed that he must pay \$10,000.00 prior to the trial, or he will not be able to present  
5 evidence in his defense! (*Id.*)

6 Since the National Grange has refused to voluntarily stay the internal "Grange Trial,"  
7 McFarland has no choice but to file this ex parte application for a temporary restraining order to  
8 restrain the National Grange from proceeding with a "Grange Trial" wherein the adjudicating panel's  
9 intent is to block any ability McFarland would have to defend himself by forcing him to pay  
10 \$10,000.00 to the National Grange in order to present supporting evidence in front of a panel that has  
11 been chosen by the very person that filed the instant complaint. (See McFarland Decl., ¶ 18.)

12 If Luttrell and the National Grange are permitted to proceed with a "Grange Trial," it will  
13 certainly result in irreparable harm to McFarland given the circumstances because National Grange  
14 will undoubtedly seek to terminate McFarland's employment by enforcing the presumed outcome of  
15 the "Grange Trial." (McFarland Decl., ¶19.)

16 The "Grange Trial" is set for March 14, 2013. Since it was not learned until on or about March  
17 4, 2012, that the National Grange intended to go forward with the "Grange Trial" on that date, the  
18 filing of a noticed motion to stay the "Grange Trial" would not be heard until after the "Grange Trial"  
19 was completed.

20 Based on the foregoing, McFarland respectfully requests that the Court grant a temporary  
21 restraining order and order to show cause why a preliminary injunction should not be issued, in order  
22 to preserve the status quo and to prevent the National Grange from interfering with McFarland's  
23 obligations under his employment contract with a California corporation until this matter may be heard  
24 on its merits at trial.

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### III. LAW AND ARGUMENT

A. **THE COURT HAS AUTHORITY PURSUANT TO CODE OF CIVIL PROCEDURE §§ 426 AND 527 TO ISSUE AN ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER TO AVOID GREAT OR IRREPARABLE INJURY**

**Code of Civil Procedure § 526** states, in pertinent part, that:

(a) An injunction may be granted in the following cases:

(1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.

(2) When it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action.

**Code of Civil Procedure § 527** states, in pertinent part, that:

(c) No temporary restraining order shall be granted without notice to the opposing party, unless both of the following requirements are satisfied:

(1) It appears from facts shown by affidavit or by the verified complaint that great or irreparable injury will result to the applicant before the matter can be heard on notice.

(2) The applicant or the applicant's attorney certifies one of the following to the court under oath:

(A) That within a reasonable time prior to the application the applicant informed the opposing party or the opposing party's attorney. . .

Injunctive relief is necessary when an injury is so impending, irreparable and immediately likely as to be avoided only by injunction. East Bay Municipal Utility District v. Dept. of Forestry & Fire Protection (1996) 43 Cal.App.4<sup>th</sup> 1113, 1126. When denial of a restraining order would result in irreparable injury to the plaintiff and granting would impose no damages on defendants not compensable, a temporary restraining order should be issued. Socialist Workers 1997 California Campaign Committee v. Brown (1997) 53 Cal.App.3d 879, 887-888.

In determining whether to issue a temporary restraining order, the court balances the severity of the restrictions sought against the injury likely to be sustained. Miller v. Superior Court (1997) 22 Cal.3d 923, 929. The Court has the discretion to balance the harm to the defendant and any harm plaintiffs may suffer if the restraining order is issued. Here, McFarland submits that when the interests

1 of both parts are examined, or “balanced,” there can be only one justified outcome: an injunction  
2 prohibiting the National Grange to proceed with its “Grange Trial” and to interfere with his  
3 employment contract with a California corporation.

4 **B. MCFARLAND SEEKS A TEMPORARY RESTRAINING ORDER AND A**  
5 **PRELIMINARY INJUNCTION BECAUSE HE WILL SUFFER IRREPARABLE**  
6 **HARM IF NATIONAL GRANGE IS NOT RESTRAINED FROM PROCEEDING**  
7 **WITH ITS “GRANGE TRIAL”**

8 It is black letter law that the purpose of a preliminary injunction is to preserve the status quo  
9 pending a trial on the merits. Continental Baking Co. v. Katz (1968) 68 Cal. 2d 512, 528. An  
10 injunction is proper when it appears during litigation that a party to the action is doing, or threatens, or  
11 is about to do, or is procuring or suffering to be done, some act in violation of the rights of another  
12 party to the action respecting the subject of the action, and tending to render the judgment ineffectual.  
13 **Code Civ. Proc. § 526(a)(3).**

14 An injunction is also proper where restraint is necessary to prevent a multiplicity of judicial  
15 proceedings. **Code Civ. Proc. § 526(a)(6); Advanced Bionics Corp. v. Medtronic, Inc.** (2002) 29  
16 Cal.4<sup>th</sup> 697, 706. While the “Grange Trial” is not an official judicial proceeding, the purpose is to  
17 obtain an outcome which would ultimately attempt to undermine the outcome of the matter presently  
18 pending before this court.

19 A temporary restraining order is proper where great or irreparable injury will result to the  
20 applicant prior to the motion being heard on notice, and the applicant has informed the opposing party  
21 and the opposing party’s attorney within a reasonable time when and where the application would be  
22 made. **Code Civ. Proc. §§ 527(c)(1) and 527(c)(2)(A).**

23 The opposing party was informed in a reasonable amount of time as required by the local rules  
24 and California rules of court about the temporary restraining order. (See Declaration of Lapcevic  
25 (**Lapcevic Decl.**), ¶ 5.)

26 A temporary restraining order is necessary here, until the noticed motion for preliminary  
27 injunction can be heard, because Plaintiff, The National Grange, seeks to take immediate action which  
28 threatens to make this court’s judgment in the pending matter ineffectual, and would otherwise occur

1 prior to the noticed motion being heard. (**Lapcevic Decl., ¶ 4.**)

2 On or about February 11, 2013, the National Grange committee sent a letter to McFarland  
3 indicating that he only had a 20 day period to submit over \$10,000.00 to pay for the entirety of the  
4 "Grange Trial" proceeding, including travel and airfare for each of the trial court members who were  
5 selected and appointed by the very person who filed this complaint. (See McFarland Decl., ¶¶ 17-18.)  
6 If McFarland fails to pay \$10,000.00 to the National Grange, he will not be permitted to present  
7 evidence in his defense at the "Grange Trial." (**See McFarland Decl., ¶17.**)

8 On March 1, 2013, McFarland requested a stay or abatement of the "Grange Trial."  
9 (**McFarland Decl., ¶ 18.**) The National denied this request, and now McFarland has only a week  
10 before he is either forced to pay over \$10,000.00 to the National Grange to fund a "kangaroo court" or  
11 lose all rights to be heard or offer a defense in that proceeding which essentially is aimed at  
12 terminating his current employment as President of the California State Grange. (**McFarland Decl., ¶¶**  
13 **17-18.**)

14 A temporary restraining order is proper since it appears from the facts shown and verified in  
15 McFarland's declaration that the likelihood of serious or irreparable injury to McFarland's  
16 employment is a high probability without a temporary restraining order.

17 McFarland currently is the President of the California State Grange and, as such, is a party to a  
18 two-year employment contract with the State Grange. (**McFarland Decl., ¶ 2**) The "Grange Trial" is  
19 an attempt to expel McFarland from the National Grange and then to remove him from his  
20 employment contract with a California corporation. The trial is set to take place on Thursday, March  
21 14, 2013. (**McFarland Decl., ¶ 21.**) Any noticed motion by McFarland, given the notice requirements  
22 for motions, would not be heard until after the "Grange Trial" took place.. (**Lapcevic Decl., ¶ 4.**) By  
23 the time the motion was heard by this court, the National Grange will have already held the "Grange  
24 Trial" and have moved to void McFarland's employment contract with the California State Grange.

25 The National Grange is simply attempting to obtain a result through a "Grange Trial" that it  
26 failed to obtain through its prior motions in the Superior Court action pending before this Court.

27 Further, there exists little to no danger to the National Grange in postponing the "Grange Trial"

1 until a noticed motion can be heard on the merits, or until after the instant matter is adjudicated at trial.  
2 Additionally, the National Grange cannot show any harm to permit McFarland to continue under his  
3 employment contract and the California State Grange to operate as it has been until the matter can be  
4 heard at trial.

5 Therefore, National Grange should be enjoined from holding its "Grange Trial" and interfering  
6 with McFarland's employment with a California corporation until this matter is resolved at trial.

7 **C. THIS COURT SHOULD GRANT THE TEMPORARY RESTRAINING ORDER**  
8 **BECAUSE THE NATIONAL GRANGE HAS WAIVED ANY RIGHT TO HOLD A**  
9 **"GRANGE TRIAL," AT LEAST WHILE THE CURRENT MATTER BEFORE THIS**  
10 **COURT IS PENDING**

11 Any right possessed by the National Grange to hold a "Grange Trial" was waived when the  
12 National Grange filed its State Court action against McFarland. Based on the existence of  
13 McFarland's employment contract, the insistence by the National Grange on proceeding with a  
14 "Grange Trial" to void or interfere with such contract is analogous to enforcing an arbitration  
15 provision, and it should be analyzed as such.

16 A court can refuse to order parties to arbitrate even where a written agreement to arbitrate  
17 exists (a) if the right to compel arbitration has been waived, (b) if grounds exist for the revocation of  
18 the agreement, or (c) if a party to the arbitration is also a party to a pending court action or special  
19 proceeding with a third party, arising out of the same transaction or series of related transactions  
20 and there is a possibility of conflicting rulings on a common issue of law or fact. Code Civ. Proc. §  
21 1281.2 (emphasis added).

22 In determining waiver courts consider: (1) whether the party demanding arbitration has taken  
23 action inconsistent with the right to arbitrate, (2) whether litigation machinery has been substantially  
24 invoked and the parties were well into preparation of a lawsuit before notice was given by the party  
25 intending to arbitrate of this intention, (3) whether the party demanded arbitration close to the trial date  
26 or delayed for a long period before seeking a stay, (4) whether a defendant seeking arbitration filed a  
27 counterclaim without asking for a stay of the proceedings, (5) whether important intervening steps  
28 have taken place such as taking advantage of judicial discovery procedures not available in arbitration,

1 and (6) whether the delay affected, misled, or prejudiced the opposing party. Chin, *et al.*, California  
2 Practice Guide: Employment Litigation § 18:726, p. 18-94.1 (Rutter Group 2012).

3 A party attempting to enforce internal proceedings or arbitration provisions can be estopped by  
4 its own conduct, and has waived its right to enforcement. Parker et al., California Practice Guide:  
5 Cal. Law and Motion Authorities § 11.35 (Rutter Group 2012) (citing **Code Civ. Proc. § 1085;**  
6 **Farahani v. San Diego Community College Dist.**, (2009) 175 Cal. App. 4th 1486).

7 The National Grange's right to compel its own alternative dispute resolution mechanism has  
8 been waived by its own conduct when it chose to file a complaint against Defendants in this court and  
9 sought a turnover order and injunction against McFarland and the California State Grange.

10 Most importantly there is a pending court action arising out of the same transaction or series of  
11 related transactions. Should the National Grange proceed with its "Grange Trial," there will most  
12 certainly be conflicting rulings on a common issue of law or fact. Here, the National Grange, which is  
13 attempting to proceed with its "Grange Trial," is the very party that filed the original action in  
14 Sacramento County Superior Court. Further, there is a clear possibility of the likelihood of conflicting  
15 rulings which will manifest themselves when the National Grange attempts to again interfere with  
16 McFarland's obligations under his employment contract with the California State Grange when the  
17 National Grange attempts to enforce the results of its "Grange Trial." In holding its "Grange Trial,"  
18 the National Grange is attempting to achieve a result it could not achieve through its earlier attempts to  
19 obtain a turnover order from this Court.

20 Therefore, the National Grange has waived its right to proceed with its "Grange Trial," and  
21 McFarland's request for injunctive relief should be granted.

22 **D. THE NATIONAL GRANGE SHOULD BE ENJOINED FROM PROCEEDING WITH**  
23 **ITS "GRANGE TRIAL" BECAUSE THE TERMS OF THE AGREEMENT ARE**  
24 **UNCONSONABLE AND VIOLATE MCFARLAND'S RIGHTS UNDER DUE**  
25 **PROCESS**

26 If the court as a matter of law finds the contract or any clause of the contract to have been  
27 unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce  
28 the remainder of the contract without the unconscionable clause, or it may so limit the application of

1 any unconscionable clause as to avoid any unconscionable result. **Code Civ. Code § 1670.5(a).**

2 Unconscionability has both procedural and substantive elements which both must be present for  
3 a court to refuse to enforce a contract provision. **Parada v. Superior Court** (2009) 176 Cal.App.4<sup>th</sup>  
4 1554, 1570; **Roman v. Superior Court** (2009) 172 Cal.App.4<sup>th</sup> 1462, 1469; **Armendariz v.**  
5 **Foundation Health Psychare Services** (2000) 24 Cal.4<sup>th</sup> 83, 99; **Harper v. Ultimo** (2003)  
6 Cal.App.4<sup>th</sup> 1402, 1406. Although both must be present to invalidate a contract, the more one is  
7 present, the less is required of the other. **Roman, supra**, 172 Cal.App.4<sup>th</sup> at 1469. The National  
8 Grange's insistence to proceed with its "Grange Trial" is both procedurally and substantively  
9 unconscionable.

10 **1. National Grange Must be Enjoined Because the "Grange Trial" Provision is**  
11 **Procedurally Unconscionable**

12 Procedural unconscionability focuses on the elements of oppression and surprise. *Id.*  
13 Oppression arises from an inequality of bargaining power resulting in the absence of a meaningful  
14 choice, and surprise involves the extent to which the terms of the bargain are hidden. *Id.* Oppression  
15 refers not only to an absence of power to negotiate, but also the absence of reasonable market  
16 alternatives. **Parada, supra**, 176 Cal.App.4<sup>th</sup> at 1572.

17 Generally, procedural unconscionability is assumed or found where there is a contract of  
18 adhesion. **Harper, supra**, Cal.App.4<sup>th</sup> at 1410. In many adhesion contracts, the weaker party lacks  
19 not only the opportunity to bargain, but also any realistic opportunity to look elsewhere for a more  
20 favorable contract. **Parada, supra**, 176 Cal.App.4<sup>th</sup> at 1572. But oppression may not be found if the  
21 complainant had a meaningful choice of alternative sources. *Id.*

22 In the present situation, National Grange has sued McFarland in Superior Court and already  
23 attempted to obtain a court order effectively terminating McFarland's rights under his employment  
24 contract. After being denied their requested relief from this court, the National Grange now seeks to  
25 hold a "Grange Trial" in order to terminate McFarland's employment rights. The rules of such  
26 proceeding require McFarland to be judged by a panel selected and appointed by the very party that  
27 filed suit against him in this court and brought charges against him in the "Grange Trial."

1 (McFarland Decl., ¶ 21.)

2 Further, although McFarland's purported discovery in the state court action related to the  
3 charges against him, counsel for McFarland extended professional courtesy and provided plaintiffs a  
4 two-week extension to respond to discovery. (**Lapcevic Decl., ¶ 7.**) It was only after providing the  
5 extension to written discovery that counsel for McFarland learned that the National Grange set its  
6 "Grange Trial" for a date prior to discovery being due. (**McFarland Decl., ¶ 21.**) Based on  
7 McFarland's inability to propound discovery, cross examine witnesses and present evidence in defense  
8 of his actions, procedural unconscionability exists.

9 **2. National Grange's "Grange Trial" Process Must be Enjoined Because It Is**  
10 **Substantively Unconscionable.**

11 Substantive unconscionability focuses on the actual terms of the agreement and evaluates  
12 whether they create an overly harsh or one-sided result. **Roman, supra**, 172 Cal.App.4<sup>th</sup> at 1469.  
13 Substantive unconscionability may take many forms but it is often found in the employment context  
14 where the clause is one-sided in favor of the employer. *Id.* at 1470.

15 Substantive unconscionability may be shown if the disputed contract provision falls outside the  
16 non-drafting party's reasonable expectations. See Parada, supra, 176 Cal.App.4<sup>th</sup> at 1573. Whether  
17 paying the costs of arbitration is considered prohibitively expensive or unconscionable is considered  
18 on a case by case basis. *Id.* at 1575-1576. A claimant's ability to pay, the expected cost differential  
19 between litigation and arbitration, and potential deterrent to bringing claims may be factors considered  
20 in the analysis. See Id.

21 If the court determines that a contractual provision is unconscionable, the court may refuse to  
22 enforce the contract, or may enforce the remainder without the unconscionable provision. *Id.* at 1585.  
23 A court may refuse to sever where there are multiple defects or unconscionable terms, if the terms are  
24 drafted in bad faith, or doing so would encourage drafters to overreach. *Id.* at 1585-1586;  
25 **Armendariz, supra, 24** Cal.4<sup>th</sup> 83, 124-125.

26 The National Grange's Bylaws, which set forth the "Grange Trial" process, is certainly a  
27 contract of adhesion. It permits the National Master of the National Grange to bring charges against an  
28

1 officer of a California corporation, based on allegations that have been investigated by the Board of  
2 Directors of the California corporation, and for which no wrongdoing was found. (See McFarland  
3 Decl., ¶¶ 6, 7.) Additionally, it permits the National Grange to hold a proceeding based on charges  
4 brought by Luttrell, in front of a panel selected and appointed by Luttrell, to determine the fate of  
5 McFarland's employment with a California corporation. (McFarland Decl., ¶¶ 17, 18.) Further, the  
6 National Grange requires an employee of a California corporation to pay \$10,000.00 in order to be able  
7 to put forth evidence in defense of his employment. However, the employee is not permitted to cross-  
8 examine witnesses, and the panel has the right not to hear any of the employee's evidence.  
9 (McFarland Decl., ¶¶ 17, 18.) The National Grange's "Grange Trial" is no different than a fascist  
10 regime charging the family of a political prisoner for the expense of the bullets used to execute their  
11 loved ones.

12 McFarland should not have to be judged by people "cherry picked" by the very person who has  
13 chosen to bring charges against him, after he had the Board of Directors review the allegations and  
14 determine that no wrongdoing had occurred. The actions of Luttrell and the National Grange in  
15 narrating their version of justice through a proposed "Grange Trial" constitutes substantive  
16 unconscionability, and they should be enjoined from continuing such actions.

17 **E. PERMITTING THE NATIONAL GRANGE TO MOVE FORWARD WITH ITS**  
18 **"GRANGE TRIAL" WOULD BE FUTILE AS THE OUTCOME IS KNOWN**

19 *"The case against Clevinger was open and shut. The only thing*  
20 *missing was something to charge him with."*

(Heller, Joseph, Catch 22, Simon and Schuster (1961) New York.)

21 Where a party can present evidence that the agency or panel has ultimately already declared  
22 what its ruling will be on a particular case, then forcing the other party to continue with such  
23 proceedings is improper. See Jonathan Neil & Associates, Inc. v. Jones (2004) 33 Cal.4<sup>th</sup> 917, 936;  
24 see, also Steinhart v. County of Los Angeles (2010) 47 Cal.4<sup>th</sup> 1298, 1313.

25 In the present matter, McFarland is being forced to pay over \$10,000.00 to proceed in front of a  
26 panel selected and appointed by the very party that has filed the instant lawsuit against McFarland in  
27 this Court. (McFarland Decl., ¶¶ 17, 18.) Should McFarland not pay the deposit, he will be denied  
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1 his due process rights of presenting evidence in his defense.

2 In a prior "Grange Trial" in which McFarland was involved, he retained counsel, brought in 6  
3 out of town witnesses, paid approximately \$5,000.00 to National Grange to put on evidence, and was  
4 cut off after 3 witnesses, found "guilty," and expelled from "the National Grange" for life.

5 (McFarland Decl., ¶ 8.) On appeal he was given a 60-day suspension, which he voluntarily accepted,  
6 and forewent further appeal for the good of the Order of the California State Grange and National  
7 Grange. (McFarland Decl., ¶ 9.) The very day McFarland returned from the voluntary suspension,  
8 Luttrell suspended him again for the present charges. (McFarland Decl., ¶ 10.)

9 There is no education in the second kick of a mule. The only step not taken by the National  
10 Grange has been to appoint Luttrell as counsel for McFarland in its "Grange Trial." The "Grange  
11 Trial" proceeding against McFarland is futile, as the outcome is certain. It is clear to anyone willing to  
12 look that the National Grange is attempting to cut off McFarland's rights to present a defense, and to  
13 facilitate a favorable outcome for National Grange and Luttrell so that they can use such result to  
14 interfere with a California employee's contract with a California corporation.

#### 15 IV. CONCLUSION

16 Based on the foregoing, Defendant McFarland requests temporary restraining order, and an  
17 order to show cause why a preliminary injunction should not be issued, in order to enjoin the National  
18 Grange from holding any proceeding that will affect or interfere with McFarland's contract with the  
19 California State Grange, and his obligations to the California State Grange, until either a noticed  
20 motion may be heard on the merits, or until such time as the instant action is adjudicated at trial.

21 Dated: March 10, 2013

22 ELLIS LAW GROUP, LLP

23 By 

24 William A. Lapcevic  
25 Attorney for Defendant  
26 ROBERT MCFARLAND  
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