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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 Case No. 34-2012-00130439

OF PATRONS OF HUSBANDRY, a

Washington, D.C. nonprofit corporation,

Plaintiff,

vs.

**NATIONAL GRANGE'S OPPOSITION TO
DEFENDANT MCFARLAND'S EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE RE PRELIMINARY
INJUNCTION**

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

Date: March 12, 2013

Time: 9:00 a.m.

Dept: 53

Defendants.

Complaint Filed: October 1, 2012

Trial Date: None Set

INTRODUCTION

Plaintiff National Grange opposes Defendant McFarland's application for a temporary restraining order to halt the internal adjudication procedures of the National Grange. The National Grange will not attempt at this time on short notice to set forth all the reasons to deny a preliminary injunction, but will focus narrowly on why McFarland's ex parte application for a temporary restraining order should be denied.

NATIONAL GRANGE'S OPPOSITION TO DEFENDANT MCFARLAND'S EX PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION

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1 First, this Court should not exercise its jurisdiction by interfering with the internal judicial
2 procedures of the National Grange and California State Grange, which together are integral parts of
3 a private non-profit organization known as the Order. Conspicuously, McFarland has not cited any of
4 the bylaws of the Order that are being clearly disregarded by his imminent Grange trial. Instead,
5 McFarland labels his trial a "kangaroo court" and hyperbolically likens the long-settled written
6 procedures to those of a "fascist regime." This is particularly odd in that McFarland admits employing
7 these same Grange trial procedures regarding different charges in 2012, when his internal appeal
8 resulted in a reduction of the punishment to a two-month suspension, which he accepted.

9 Second, McFarland sets forth no immediate and irreparable harm that he faces by having his
10 Grange trial proceed. He does not suggest that the California State Grange will immediately terminate
11 its employment contract with him as a result of the Grange trial. Indeed, McFarland and the California
12 State Grange have thus far ignored his suspension ordered August 1, 2012, and the ensuing suspension
13 of the Charter of the State Grange in September 2012, contrary to the clear bylaws of the Order.
14 McFarland remains employed by the California State Grange and nothing is likely to change that it
15 the coming weeks. Of course, even if the Grange trial results in discipline being imposed upon
16 McFarland, he will again be entitled to appeal under the bylaws of the Order. McFarland's claim of
17 irreparable harm regarding his employment is simply not ripe at this time.

18 Finally, McFarland's explanation for delaying filing this application until three days before the
19 Grange trial is set to begin makes no sense. McFarland has known for many months that he would
20 have another Grange trial and was familiar with the rules and procedure, but never moved to block
21 the internal Grange proceedings until now. Moreover, McFarland admits that in February he received
22 notice of the precise date of the Grange trial and the amount of the deposit required, but still did not
23 move for the instant relief. Now, only days prior to commencement of the Grange trial, after travel
24 arrangements have been made and costs incurred for the Grange trial, he moves to restrain the Grange
25 trial from going forward.
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1 In sum, neither the jurisdictional limitations upon this Court nor the balance of relative
2 hardships favor McFarland in requesting this Court to prevent the imminent Grange trial from going
3 forward. Thus, his application for a temporary restraining order should be denied.

4 LEGAL ARGUMENTS

5 **I. CALIFORNIA COURTS SHOULD REFRAIN FROM INTERFERING WITH THE** 6 **INTERNAL ADJUDICATION PROCEDURES OF A PRIVATE ORGANIZATION** 7 **UNLESS ITS BYLAWS ARE BEING CLEARLY DISREGARDED.**

8 The National Grange should be permitted to undertake its internal adjudication procedures
9 without the intervention of civil courts. The California Supreme Court explained the narrowly limited
10 role of the judiciary regarding the internal rules of private associations, such as the Grange.
11 Specifically, *California Dental Assn. v. American Dental Assn.* (1979) 23 Cal.3d 346, 353-354, stated:

12 As was recognized in *Dingwall v. Amalgamated Assn. etc.* (1906) 4 Cal.App. 565, 569
13 [88 P. 597], "the rights and duties of the members as between themselves and in their
14 relation to [a private voluntary] association, in all matters affecting its internal
15 government and the management of its affairs, are measured by the terms of [its]
16 constitution and by-laws." (See also *Stoica v. International etc. Employees* (1947) 78
17 Cal.App.2d 533, 535-536 [178 P.2d 21].) In many disputes in which such rights and
18 duties are at issue, however, the courts may decline to exercise jurisdiction. Their
19 determination not to intervene reflects their judgment that the resulting burdens on the
20 judiciary outweigh the interests of the parties at stake. One concern in such cases is
21 that judicial attempts to construe ritual or obscure rules and laws of private
22 organizations may lead the courts into what Professor Chafee called the "dismal
23 swamp." (Chafee, *The Internal Affairs of Associations Not for Profit* (1930) 43
24 Harv.L.Rev. 993, 1023-1026.) Another is with preserving the autonomy of such
25 organizations. (Note, *Developments in the Law - Judicial Control of Actions of*
26 *Private Associations* (1963) 76 Harv.L.Rev. 983, 990-991.)

27 Under *California Dental Assn.*, a civil court should consider interfering only "when a private
28 voluntary organization plainly contravenes the terms of its bylaws." (*Id.* at p. 353.) McFarland,
however, never indicates that the National Grange is violating its own bylaws, or even those of the
California State Grange, which adopts wholesale the National Grange rules for Grange trials. He
merely argues for the first time that the bylaws themselves are unfair. As the California Supreme Court

1 noted, however, courts should not micro-manage the particular disciplinary procedures employed for
2 "fairness," especially where, as here, membership in the private voluntary organization does not
3 occupy a position of special importance in society. (*Id.* at pp. 352-353.)

4 Under California law, a corporation is governed through its bylaws and articles of
5 incorporation. A nonprofit corporation has the broad power to organize itself through its bylaws in
6 a great variety of possible forms, and may delegate control to other organizations. (Corp. Code, §
7 7040, subd. (j).) The California State Grange is a chartered division of the National Grange and has
8 agreed to delegate control to that organization regarding disciplinary proceedings for Masters of State
9 Granges.¹ Article IX of the Constitution of the California State Grange provides: "The State Grange
10 shall use the procedures as provided for in the Digest of Laws of the National Grange for all trials of
11 members of the Order charged with violations of this Constitution; By-Laws, the Manuals of the
12 Degrees of the Order; or the laws of any division of the Order that may apply."

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15 In any event, McFarland does not demonstrate that the long-established internal procedures
16 of the Order are unfair. They are certainly not a surprise. McFarland has served as Master of the
17 California State Grange for several years, through which he has been involved in numerous
18 disciplinary proceedings in applying these same provisions against his perceived adversaries to this
19 day. In addition, McFarland himself admittedly experienced a Grange trial on charges against him in
20 2012, in which he had to deposit some \$5000, but had the punishment against him greatly reduced on
21 appeal. Of course, under the bylaws of the Order the party bringing charges also has to deposit the
22 same amount as the person facing charges, and Luttrell has reciprocally already deposited \$10,000
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26 McFarland's account of the dueling reports of the majority and minority of the California State Grange
27 Executive Committee is irrelevant, because it is not mentioned in the bylaws as part of the internal
28 disciplinary proceedings for a state Grange master.

1 here. McFarland has never claimed an inability to deposit the requisite funds. In addition, there exists
2 no general due process requirement that witnesses at a hearing must be subject to cross-examination
3 or that the person facing Grange charges must be given the right to put on as many defense witnesses
4 as he wishes, no matter how redundant, within a finite hearing schedule.

5 McFarland's attempt to equate the internal Order disciplinary proceedings to a contractual
6 arbitration is thoroughly misguided. The bylaws of the Order regarding internal discipline are not in any
7 manner similar to contractual arbitration provisions agreed to by private parties regarding a
8 commercial dispute in lieu of trial. Furthermore, there has been no waiver of a Grange trial by the
9 National Grange and there is no possibility of conflicting rulings on a common issue of law or fact.
10 Indeed, the National Grange filed the instant action precisely because McFarland and the California
11 State Grange under his direction refused to follow the clear bylaws regarding suspension of a State
12 Grange Master. The National Grange was not seeking to circumvent the use of internal procedure, but
13 to ensure its implementation. The sought turnover of property by McFarland and the California State
14 Grange during suspension was only pending final internal adjudication, not in place of it. Hence, there
15 is no possibility of conflicting findings of fact or law. The internal substantive adjudication of
16 McFarland's misconduct under the bylaws of the Order in a Grange trial is separate and distinct from
17 the question of whether McFarland and the California State Grange are disregarding the clear bylaws
18 by disregarding authorized suspensions and rejecting the outcome of the internal procedures in
19 advance.
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23 **II. MCFARLAND SETS FORTH NO IMMEDIATE AND IRREPARABLE HARM TO**
24 **HIM LIKELY TO RESULT FROM THE UPCOMING GRANGE TRIAL.**

25 McFarland suggests that if his Grange trial goes forward he will be irreparably harmed through
26 his employment contract. McFarland, however, does not submit facts indicating the California State
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1 Grange will likely terminate his employment contract if he is found to have committed the charges and
2 given discipline. It does not make any sense to call any discipline McFarland might receive at the
3 Grange trial "irreparable," especially where his own admitted experience demonstrates that the
4 imposed discipline can be overturned or reduced through the internal appeal procedure of the bylaws.
5 Interestingly, McFarland never lost pay during his two-month suspension as Master in 2012, nor does
6 he claim otherwise.

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8 McFarland's past conduct and pronouncements about the future negate the likelihood that he
9 and the California State Grange will suddenly begin to follow the authorized decisions of the National
10 Grange. McFarland admits that on August 1, 2012, he was suspended as Master of the California State
11 Grange and he does not deny that the Order bylaws authorize such a suspension, pending an
12 opportunity to show that the facts and bylaws preclude the charges against him at the Grange trial. In
13 any event, there is nothing suggesting an unfavorable decision for McFarland in the Grange trial will
14 immediately affect his employment contract with the California State Grange in any way. Whether the
15 National Grange eventually seeks to have the California State Grange terminate his employment
16 contract in the future is not a question of immediate, irreparable harm.

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18 **III. CANCELING THE GRANGE TRIAL AT THIS LATE DATE WOULD CAUSE**
19 **GREATER HARM TO THE NATIONAL GRANGE.**

20 Because of his position and experience, McFarland knew since August 2012 that he would face
21 a Grange trial and have to pay money for the costs of the trial. By January 2013, he knew generally
22 when the Grange trial would occur and in mid-February 2013 McFarland received notice of the
23 requirement to deposit \$10,000. By letter of February 27, 2013, McFarland received confirmation in
24 writing that his Grange trial would commence on March 14, 2013, in Sacramento. Nevertheless,
25 McFarland waited until three days before the Grange trial was to commence before filing the instant
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1 application for a temporary restraining order. McFarland provides no good excuse for such delay.

2 McFarland contends that he had no reason oppose the Grange trial until he was certain it was
3 going forward. Yet on March 1, 2013, McFarland's counsel sent a letter to Steven Verrill (Exh. L)
4 warning that McFarland would seek to enjoin the Grange trial if the "Kangaroo Court" was not called
5 off. Yet there was never any discussion hinting that the Grange trial would be postponed until after
6 the instant matter was judicially adjudicated in the Sacramento Superior Court.²


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8 Numerous parties and entities have paid significant sums of money in arranging for the Grange
9 trial to be conducted on March 14, 2013, and continuing into March 15, 2013. Many of these sums,
10 including travel itineraries from across the nation, are unlikely to be fully (if at all) refunded if the
11 Grange trial is cancelled at this late date. In sum, the immediate damage from canceling the Grange
12 trial now greatly outweighs the speculative future damage to McFarland's employment if the Grange
13 trial goes forward and he is disciplined and the internal Order appeal process upholds the discipline
14 against him.
15

16 **CONCLUSION**

17 For all the foregoing reasons, the temporary restraining order sought by McFarland should be
18 denied.

19 Dated: March 11, 2013

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21 
22 By _____
23 Martin N. Jensen

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25 McFarland points to extension for discovery responses he granted regarding the judicial action as a
26 reason to delay the Grange trial. Once again, McFarland is confused about the different purposes of
27 the two proceedings. The National Grange filed the judicial action simply to require McFarland and
28 the National Grange to adhere to the bylaws they pledged to obey, but the Grange trial goes to
determine whether McFarland had as a substantive matter violated specific rules and bylaws.

NATIONAL GRANGE'S OPPOSITION TO DEFENDANT MCFARLAND'S EX PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION

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

3 **DECLARATION OF SERVICE**

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

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

10 On March 11, 2013, I served a copy of the following document(s):

11 **NATIONAL GRANGE'S OPPOSITION TO DEFENDANT MCFARLAND'S EX PARTE**
12 **APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW**
13 **CAUSE RE PRELIMINARY INJUNCTION**

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

15 **Attorneys for Robert McFarland**

16 Mark Ellis
17 Ellis Law Group
18 740 University Ave., Suite 100
19 Sacramento, CA 95814
20 MEllis@EllisLawGrp.com

21 **Attorneys for Defendants The California**

22 **State Grange, John Luvaas, Gerald**
23 **Chernoff, and Damian Parr**

24 Robert D. Swanson
25 Daniel S. Stouder
26 BoutinJones
27 555 Capitol Mall, Suite 1500
28 Sacramento, CA 95814
rswanson@boutinjones.com
dstouder@boutinjones.com

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

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

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

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

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

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

40 Executed at Sacramento, California on March 12, 2013.

41 
Aimee Ludlow