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LEGAL PROCESS #3

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

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

Plaintiff,

v.

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

Defendants.

Case No.: 34-2012-00130439

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RETURN ON ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION

DATE: March 29, 2013
TIME: 2:00 p.m.
DEPT: 53

Complaint filed: October 1, 2012
Trial Date: None set

ORIGINAL

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Treatises

I. INTRODUCTION

This motion by Defendant Robert McFarland (hereinafter "McFarland") is brought pursuant to **Code of Civil Procedure §§ 526** for a preliminary injunction restraining Plaintiff, The National Grange of the Order of Patrons of Husbandry (hereinafter "The National Grange") from holding a "Grange Trial", 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 preliminary injunction 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 attempted to seat unqualified delegates at the California State Grange sessions, and (c) McFarland

purportedly attempted to harass and/or intimidate staff members. (See *Id.*)

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

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

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

c) Finally on January 24, 2012, as part of its last report, The California State Grange Executive Committee concluded it had found no evidence of any wrongdoing or violation of Grange Law by McFarland based upon all allegations put forth for review. (**McFarland Decl., ¶ 6; Exhibit B** to the **Index of Exhibits**.[1])

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

At or about the same time, McFarland was involved in a separate "Grange Trial." (**McFarland**

[1] All Exhibits submitted in support of this Motion for Preliminary Injunction are attached to Defendant Robert McFarland's Index of Exhibits, filed herewith.

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

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

During McFarland's suspension as President of the California State Grange, Overseer Stefenoni became the acting Master, and she wasted no time sending out broadcast emails defaming McFarland and abusing her position by searching office records and interrogating California State Grange officials and attorneys in an attempt to solicit additional evidence against McFarland which she could bring to Luttrell to support additional charges.[3] **(McFarland Decl.,** ¶10.) Upon McFarland's return on August 1, 2012, Luttrell immediately suspended McFarland based upon the allegations in the minority report, and this time, he added other charges based upon McFarland's involvement in a settlement agreement that had occurred in 2009, of which Luttrell was fully aware at the time it took place. (See ***Id.***.)

Based upon the past actions of Luttrell and Stefenoni, McFarland refused to accept the suspension as it was a clear attempt to remove him from his elected office and to interfere with his employment contract, contrary to the laws of California, and the laws of the Grange. **(McFarland**

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[2] 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.

[3] Interestingly, Ms. Stefenoni filed the complaint, testified against McFarland, and then reaped the rewards of his suspension.

Decl., ¶11.) The California Grange Board of Directors agreed with McFarland, and, based upon discussions that followed the suspension, the Board agreed to take the following positions:

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

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

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

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

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

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

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

On or about February 11, 2013, the National Grange sent a letter to McFarland informing him that it would be conducting a "Grange Trial," and that the "Grange Trial" will adjudicate the allegations brought by Luttrell against McFarland. (See **McFarland Decl.,** ¶ 17.) The panel that will adjudicate the matter has once again been selected and appointed by Luttrell. (***Id.***) Further, McFarland was informed that he must pay $10,000.00 prior to the trial, or he will not be able to present evidence in his defense! (***Id.***)

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

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

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

Based on the foregoing, McFarland respectfully requests that the Court grant a preliminary injunction, in order to preserve the status quo and to prevent the National Grange from interfering with McFarland's obligations under his employment contract with a California corporation until this matter may be heard on its merits at trial.

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III. LAW AND ARGUMENT

A. THE COURT HAS AUTHORITY PURSUANT TO CODE OF CIVIL PROCEDURE § 526 TO ISSUE PRELIMINARY INJUNCTION 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.

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.4th 1113, 1126.

Here, McFarland submits that when the interests of both parts are examined, or "balanced," there can be only one justified outcome: an injunction prohibiting the National Grange to proceed with its "Grange Trial" and to interfere with his employment contract with a California corporation.

B. MCFARLAND SEEKS A PRELIMINARY INJUNCTION BECAUSE HE WILL SUFFER IRREPARABLE HARM IF NATIONAL GRANGE IS NOT RESTRAINED FROM PROCEEDING WITH ITS "GRANGE TRIAL"

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

An injunction is also proper where restraint is necessary to prevent a multiplicity of judicial proceedings. **Code Civ. Proc. § 526(a)(6)**; **Advanced Bionics Corp. v. Medtronic, Inc.** (2002) 29 Cal.4th 697, 706. While the "Grange Trial" is not an official judicial proceeding, the purpose is to

obtain an outcome which would ultimately attempt to undermine the outcome of the matter presently pending before this court.

A preliminary injunction order is necessary here because Plaintiff, The National Grange, seeks to take extra judicial action which threatens to make this court's judgment in the pending matter ineffectual, and adversely affect the status quo prior to this matter being heard on its merits at trial. **(Lapcevic Decl., ¶ 9.)**

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

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

A preliminary injunction is proper since it appears from the facts shown and verified in McFarland's declaration that the likelihood of serious or irreparable injury to McFarland's employment is a high probability without injunctive relief.

McFarland currently is the President of the California State Grange and, as such, is a party to a two-year employment contract with the State Grange. **(McFarland Decl., ¶ 2)** The "Grange Trial" is an attempt to expel McFarland from the National Grange and then to remove him from his employment contract with a California corporation. The trial was set to take place on Thursday, March 14, 2013. **(McFarland Decl., ¶ 21.)** Although McFarland was successful in staying the "Grange Trial" by obtaining a temporary restraining order, the National Grange is intent on setting a "Grange

Trial" prior to a conclusion in this Court. **(Lapcevic Decl., ¶ 8.)**

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

Further, there exists little to no danger to the National Grange in postponing the "Grange Trial" until a noticed motion can be heard on the merits, or until after the instant matter is adjudicated at trial. Additionally, the National Grange cannot show any harm to permit McFarland to continue under his employment contract and the California State Grange to operate as it has been until the matter can be heard at trial.

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

C. THIS COURT SHOULD GRANT THE PRELIMINARY INJUNCTION BECAUSE THE NATIONAL GRANGE HAS WAIVED ANY RIGHT TO HOLD A "GRANGE TRIAL," AT LEAST WHILE THE CURRENT MATTER BEFORE THIS COURT IS PENDING

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

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

In determining waiver courts consider: (1) whether the party demanding arbitration has taken action inconsistent with the right to arbitrate, (2) whether litigation machinery has been substantially invoked and the parties were well into preparation of a lawsuit before notice was given by the party

intending to arbitrate of this intention, (3) whether the party demanded arbitration close to the trial date or delayed for a long period before seeking a stay, (4) whether a defendant seeking arbitration filed a counterclaim without asking for a stay of the proceedings, (5) whether important intervening steps have taken place such as taking advantage of judicial discovery procedures not available in arbitration, and (6) whether the delay affected, misled, or prejudiced the opposing party. Chin, et al., **California Practice Guide: Employment Litigation** § 18:726, p. 18-94.1 (Rutter Group 2012).

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

The National Grange's right to compel its own alternative dispute resolution mechanism has been waived by its own conduct when it chose to file a complaint against Defendants in this court and sought a turnover order and injunction against McFarland and the California State Grange. **See Exhibit N**, Complaint filed October 1, 2012.

Most importantly there is a pending court action arising out of the same operative facts or series of related transactions, which the National Grange seeks to now adjudicate in a "Grange Trial. **See Exhibit O,** Order denying National Grange's Motion for Preliminary Injunction. Should the National Grange proceed with its "Grange Trial," there will most certainly be conflicting rulings on a common issue of law or fact.

Here, the National Grange, which is attempting to proceed with its "Grange Trial," is the very party that filed the original action in Sacramento County Superior Court. Further, there is a clear possibility of the likelihood of conflicting rulings which will manifest themselves when the National Grange attempts to again interfere with McFarland's obligations under his employment contract with the California State Grange when the National Grange attempts to enforce the results of its "Grange Trial." In holding its "Grange Trial," the National Grange is attempting to achieve a result it could not achieve through its earlier attempts to obtain a turnover order from this Court.

Therefore, the National Grange has waived its right to proceed with its "Grange Trial," and

McFarland's request for injunctive relief should be granted.

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

If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. **Code Civ. Code § 1670.5(a).**

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

1. National Grange Must be Enjoined Because the "Grange Trial" Provision is Procedurally Unconsionable

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

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

In the present situation, National Grange has sued McFarland in Superior Court and already attempted to obtain a court order effectively terminating McFarland's rights under his employment contract. After being denied their requested relief from this court, the National Grange now seeks to hold a "Grange Trial" in order to terminate McFarland's employment rights. The rules of such proceeding require McFarland to be judged by a panel selected and appointed by the very party that filed suit against him in this court and brought charges against him in the "Grange Trial.". **(McFarland Decl., ¶ 21.)**

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

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

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

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

If the court determines that a contractual provision is unconscionable, the court may refuse to

enforce the contract, or may enforce the remainder without the unconscionable provision. ***Id.*** at 1585. A court may refuse to sever where there are multiple defects or unconscionable terms, if the terms are drafted in bad faith, or doing so would encourage drafters to overreach. ***Id.*** at 1585-1586; **Armendariz, *supra*,** 24 Cal.4th 83, 124-125.

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

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

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

> **"The case against Clevinger was open and shut. The only thing missing was something to charge him with."**
>
> (Heller, Joseph, Catch 22, Simon and Schuster (1961) New York.)

Where a party can present evidence that the agency or panel has ultimately already declared

what its ruling will be on a particular case, then forcing the other party to continue with such proceedings is improper. See **Jonathan Neil & Associates, Inc. v. Jones** (2004) 33 Cal.4th 917, 936; see, also **Steinhart v. County of Los Angeles** (2010) 47 Cal.4th 1298, 1313.

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

In a prior "Grange Trial" in which McFarland was involved, he retained counsel, brought in 6 out of town witnesses, paid approximately $5,000.00 to National Grange to put on evidence, and was cut off after 3 witnesses, found "guilty," and expelled from "the National Grange" for life. (**McFarland Decl.**, ¶ 8.) On appeal he was given a 60-day suspension, which he voluntarily accepted, and forewent further appeal for the good of the Order of the California State Grange and National Grange. (**McFarland Decl.**, ¶ 9.) The very day McFarland returned from the voluntary suspension, Luttrell suspended him again for the present charges. (**McFarland Decl.**, ¶ 10.)

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

F. THE COURT HAS AUTHORITY TO ENJOIN THE NATIONAL GRANGE FROM HOLDING A "GRANGE TRIAL" IN WHICH THE PURPOSE AND KNOWN RESULT IS TO INTERFERE WITH MCFARLAND'S EMPLOYMENT CONTRACT.

The National Grange's efforts to enforce Lutrell's dictatorial mandates are too clever by half. After the National Grange failed to obtain injunctive relief they have now endeavored to achieve their desired result through the use of a "Grange Trial" in which Lutrell has filed the charges against McFarland, selected and appointed a panel of persons to adjudicate McFarland's fate, as well as forcing McFarland to pay an extraordinary amount in order to participate. **See Decl. McFarland ¶¶17-**

18. To support its actions, the National Grange has relied on **California Dental Association v. American Dental Association** (1979) 23 Cal.3d 346, and taken the position that that the Court has no authority to intervene in the interpretation over the bylaws and/or constitution of a private organization. **See National Grange's Opposition to Ex Parte**. However, **California Dental Association** actually supports McFarland's position for granting a preliminary injunction.

First, **California Dental Association** was a case in which a State association litigated a dispute with a National association (its parent organization) and the State association prevailed. **California Dental Association, *supra***, 23 Cal.3d 346.

Additionally, the California Supreme Court held that not only does the State Court have jurisdiction over a National Association, but that it properly exercised such jurisdiction to protect the State association. **California Dental Association, *supra***, 23 Cal.3d 346. In the present matter, the National Grange has actually filed a lawsuit against McFarland in the Sacramento County Superior Court, which inarguably provides jurisdiction over the **National Grange** action by this Court. Essentially the National Grange is arguing that this Court has the jurisdiction to enforce any factual finding so long as it is developed through Luttrell's procedural machination known as the "Grange Trial". However, it has already been shown that the "Grange Trial" is futile as the outcome is known.

Finally, the California Supreme Court held that a Court can weigh the interest in protecting the aggrieved parties' rights against the infringement on the organizations autonomy and the burdens on the Courts that will result from judicial attempts to settle internal disputes. **Id.** at 350. In the present matter there can be no harm to the interests of the National Grange in prohibiting them from interfering with the employment contract between McFarland and a California Corporation. However, the failure to impose an injunction against a "Grange Trial" taking place seriously and adversely affects the interests of McFarland's employment and the operations of the California State Grange. The National Grange picked this forum by filing a civil lawsuit against McFarland and attempting to obtain injunctive relief to remove McFarland from his current employment. Pursuant to the terms of the employment contract, Mr. McFarland has an annual salary of approximately $38,000.00. (**McFarland Decl. ¶18.**) Based on the rules of Lutrell's "Grange Court", McFarland will have to expend

approximately one-quarter of his annual salary in order to have the equivalent of a lottery ticket odds of presenting evidence in his defense and even less of maintaining his employment. **See Exhibit O**. It is clear that the detrimental impact of the National Grange going forward with its "Grange Trial" has a far greater adverse effect on McFarland's employment and the operations of a California Corporation than it does on the National Grange.

IV. CONCLUSION

Based on the foregoing, Defendant McFarland requests a preliminary injunction in order to enjoin the National Grange from holding any proceeding that will affect or interfere with McFarland's contract with the California State Grange, and his obligations to the California State Grange, until either a noticed motion may be heard on the merits, or until such time as the instant action is adjudicated at trial.

Dated: March 13, 2013

ELLIS LAW GROUP, LLP

By _____
William A. Lapcevic
Attorney for Defendant
ROBERT MCFARLAND