Mark E. Ellis - 127159
William A. Lapcevic – 238893
ELLIS LAW GROUP, LLP
740 University Avenue, Suite 100
Sacramento, CA 95825
Tel: (916) 283-8820
Fax: (916) 283-8821

Attorneys for
DEFENDANT ROBERT MCFARLAND

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

REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT ROBERT MCFARLAND'S 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

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Defendant Robert McFarland (hereinafter "McFarland") submits the following reply brief in support of return on Order to Show Cause why a preliminary injunction should not be granted.

I. INTRODUCTION

After review of the National Grange's opposition to McFarland's motion for preliminary injunction, it is more apparent than ever that this Court should exercise its jurisdiction and issue an injunction to stop the National Grange from violating California Law and interfering with McFarland's employment contract and the day to day operations of a California corporation.

First, the National Grange's proposed "Grange Trial" is nothing more than an "end around attempt" to obtain a result it could not achieve by filing the instant lawsuit and which is both contrary to its own bylaws and to California Law.

Second, based on the lack of any authority or standing for the National Grange to remove an officer from a California Corporation, McFarland is likely to prevail on such issue at trial.

Third, the "Grange Trial" will cause irreparable harm to McFarland as its sole function is to achieve expulsion of McFarland from the National Order and thereby terminate his employment contract with the California State Grange.

Fourth, the Court should issue an injunction to stop any action by the National Grange to remove an officer and to interfere with the daily operations and management of a California Corporation in order to preserve the status quo until this matter can be decided at trial on the merits.

II. LAW AND ARGUMENT

A. THIS COURT MUST EXERCISE ITS JURISDICTION, TO WHICH THE NATIONAL GRANGE HAS AVAILED ITSELF BY FILING THIS INSTANT LAWSUIT, TO PREVENT THE INJUSTICE WHICH THE NATIONAL GRANGE SEEKS THROUGH THE USE OF A "GRANGE TRIAL"

Although the National Grange asserts the argument that this Court cannot interfere with the inner workings of a private organization, this is simply not true. **See California Dental Association v. American Dental Association** (1979) 23 Cal.3d 346. In that case, 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. ***Id.*** at 350-352.

In the present matter, the National Grange chose this forum by filing this lawsuit in Sacramento County Superior Court. **(Exhibit N.)** Further, at the time of filing its Complaint, the National Grange requested injunctive relief in the form of McFarland being restrained from continuing as President of the California State Grange, and that the California State Grange turn over all keys, buildings, computer passwords and all information necessary for the National Grange, a Washington D.C. Corporation, to take over and operate a California corporation. **(Exhibit N.)**

After it failed at its attempt at constructively terminating McFarland through the judicial process, the National Grange has resorted to Luttrell's internal machination known as the "Grange Trial". Pursuant to the Digest of Laws, officers of State Granges must be members in good standing.

The obvious purpose of the "Grange Trial" is to expel McFarland as a member of the National Grange and then seek to enforce the "Grange Trial" decision in this State Court action. However, any attempt by the National Grange to expel McFarland from the National Grange through the proposed "Grange Trial" and terminate McFarland's employment as President of a California corporation is contrary both to the Bylaws of the National Grange, and to California Law.

1. The Attempt By The National Grange To Proceed Directly To A "Grange Trial" Without Having An Arbitration Panel Take Reasonable Steps To Resolve The Issues Between The Parties Is Contrary To The Bylaws Of The National Grange.

By filing a lawsuit and seeking injunctive relief in Sacramento Superior Court rather than appointing an Arbitration Committee and taking reasonable steps to resolve their issues the National Grange has acted contrary to its bylaws.

Pursuant to section 12.2.16 of the Digest of laws:

> When a Complaint is brought... it shall be filed with the Master of the National Grange. Upon receipt of the Complaint, the Master of the National Grange shall appoint a three (3) person Arbitration Panel within 30 days, naming one member as Chairperson. **(Exhibit W, Digest of Laws,** p. 70.)

Further, section 12.2.17 of the National Grange bylaws provides:

> The Arbitration Panel shall review the Complaint within 30 days and may allow comment from Respondent and from Complainant. ***Thereafter, the Arbitration Panel shall take reasonable steps to resolve the issues between parties.*** **(Exhibit W,** p. 70; emphasis added.)

Importantly, the Digest of Laws is devoid of any language that states that the National Grange will file a lawsuit against an individual member seeking their expulsion and immediate injunctive relief in Superior Court. (**Exhibit W.**) However, that is exactly the action which the National Grange chose to undertake in this matter.

Although Luttrell brought charges against McFarland on August 6, 2012, no steps were ever taken by the Arbitration Panel to resolve any issue between McFarland and Luttrell. (**Decl. McFarland re: Reply,** ¶ 11.) On or about September 21, 2012 (approximately 45 days after Luttrell filed his complaint), McFarland received a letter, purportedly from an Arbitration Panel, asking him to respond to the charges filed by Luttrell within 15 days of receipt of such letter. (**Decl. of McFarland re: Reply, ¶9; Exhibit R.**) However, rather than waiting the 15 days for McFarland to respond to Luttrell's charges, the National Grange ignored its bylaws and, on October 1, 2012, filed a lawsuit against McFarland personally and sought immediate injunctive relief which included a Court Order restraining McFarland from his employment. (**Exhibit N.**)

On or about January 7, 2013, approximately 5 months after Luttrell initially brought charges against McFarland, the Arbitration Panel, without ever speaking with McFarland or taking any "reasonable steps" to resolve any issues between the parties as required in the bylaws, suddenly recommended a "Grange Trial". (See **Decl. McFarland re: Reply**, ¶10; **Exhibit S.**) By failing to appoint an Arbitration Panel within 30 days of the date of the complaint, and by the Arbitration Panel not taking any "reasonable steps" to resolve the issues prior to recommending a "Grange Trial," the National Grange has violated its own bylaws. Moreover, the National Grange is now attempting to limit the jurisdiction of the very Court where it chose to file a lawsuit.

It is clear that after realizing that it was going to have to present its case through witnesses and evidence in a forum in which a determination will be made by an impartial finder of fact, the National Grange decided to reverse course and move forward with a "Grange Trial".

Therefore, the actions of the National Grange must be enjoined as they are contrary to its own bylaws.

2. The National Grange's Attempt To Expel Officers And Directors Of A California Corporation Through A "Grange Trial" Is Contrary To California Law.

Essentially, the National Grange is attempting to remove an officer of the California State Grange through the machination of a "Grange Trial". Simply put, a foreign corporation is attempting to remove an officer of a California corporation by expelling the member from the National Order, in violation of California Law.

Pursuant to California Corporations Code § 7213, an officer of a California Corporation serves at the pleasure of the Board of Directors. **Corp. Code § 7213(b).** Under settled California law, the election and removal of the officers of a corporation is the sole province of its board of directors. **Corp. Code §7213(a), (b).** Standing to file suit to remove a director is vested in a fellow director, the Attorney General, or a prescribed number of the corporation's members. **Corp. Code § 7223(a), (b).** The National Grange is none of these and, as such, has no authority to take actions that would remove an elected officer of a California Corporation.

3. McFarland Is Immune From Liability For Approving A Settlement With The Authority And Consent Of The Board Of Directors, And Any Attempt By The National Grange To Do So Is Contrary To "The Business Judgment Rule".

Every person who joins the Grange must take the Oath which states in pertinent part:

> *"...I will conform to and abide by the laws of my State and Nation, and the Constitution, rules and regulations of the Grange at all levels ..."* (**Exhibit W** at § 4.6.4(G), p. 16.)

As previously mentioned, the California State Grange was created as a corporation under California law, and, therefore, the laws of California are binding on the conduct of business by that corporation. In that way, California law also governs issues of corporate governance, such as those presented by Luttrell in his Complaint within the "Grange Trial" -- that McFarland somehow violated the National Grange bylaws by entering into a settlement with the Vista Grange on behalf of the California State Grange, with the advice and consent of its Board of Directors. **(Decl. of McFarland re: Reply, ¶** 10; **Exhibit D,** §§ A-D.)

Under California law, the Business Judgment Rule shields corporate directors from legal liability for decisions that they make in good faith and in the best interests of the corporation. **Lamden**

v. La Jolla Shores Condominium Homeowners Ass'n (1999) 21 Cal.4th 249, 259. The California Corporations Code codifies the protection that members of the board of directors enjoy from personal liability. **Corp. Code § 309.** California courts, applying California corporations law, are limited in their authority to impose liability on an individual director or reverse the decision of a lawfully seated and empowered Board or its Executive Committee. Lee v. Interinsurance Exchange (1996) 50 Cal.App. 4th 694, 714. Assuming the Executive Committee acted in good faith in what it thought was the best interest of the California State Grange, utilizing criteria in making the decision that a reasonably prudent person would use, then a Court will not "second guess" the directors even if they were wrong, and even if the Court would have disagreed with their action.

In the present matter, McFarland was elected as President of the California State Grange in 2009, when the lawsuit with the Vista Grange was already in process. **(Decl. of McFarland re: Reply, ¶ 2.)** As President, McFarland had an obligation to manage the finances of the corporation, which had run a deficit for the three prior years. **(Decl. of McFarland re: Reply, ¶ 3.)** After the National Grange refused to provide any financial support or assistance to the California State Grange, McFarland, with the advice and consent of a majority of the elected Board of Directors, settled the civil suit during a Court ordered mediation. **(Decl. of McFarland re: Reply, ¶¶ 3-5.)**

The National Grange is now attempting to expel McFarland from the Order of the Grange on a basis that he settled a civil lawsuit on behalf of a California Corporation with the authority and consent of its Board of Directors at a Court ordered mediation. **(Decl. of McFarland, ¶10; Exhibit D.)** California law absolves McFarland of any personal liability for the settlement. Therefore, any attempt by the National Grange to take punitive actions against McFarland for settling a civil lawsuit on behalf of a California Corporation, whose Board of Directors authorized McFarland to settle, is contrary to the California Corporations Code and should be enjoined.[1]

[1] It is of interest to note, that the National Grange never took any action against any member of the Executive Committee of the California State Grange for affirming the terms of the settlement agreement of the Vista lawsuit. Inger Bevans, who formally brought charges against McFarland in the past voted in favor of the terms of the settlement and Martha Stefenoni, with whom Edward Lutrell would like to replace McFarland, abstained from the vote but never voted against the settlement.

B. BASED ON THE ABSENCE OF ANY AUTHORITY FOR A FOREIGN CORPORATION TO REMOVE AN OFFICER OF A CALIFORNIA CORPORATION MCFARLAND WILL LIKELY PREVAIL ON THAT ISSUE AT TRIAL.

The California Supreme Court has set forth the standard for preliminary injunctions as follows.

> "When deciding whether or not to issue a preliminary injunction, trial courts must evaluate two interrelated factors. **Cohen v. Board of Supervisors** (1985) 40 Cal.3d 277, 286. The first is the likelihood that plaintiff will prevail on the merits at trial. The second is the interim harm that the plaintiff is likely to sustain if the injunction were denied as compared to the harm that the defendant is likely to suffer if the preliminary injunction were issued. [citations]" **CBS, Inc. v. Block** (1986) 42 Cal.3d 646, 650.

Based on the authority set forth in the preceding section, the National Grange has no authority to interfere with, or to remove, a Corporate Officer of a California Corporation. (*See* §§ A(1)-(3) above.) As such, McFarland is likely to prevail on the merits at trial on the issue of whether the National Grange can remove an officer of a California Corporation; thus, the National Grange should be enjoined from taking actions outside the present lawsuit to interfere with McFarland's employment contract.

C. MCFARLAND WILL SUFFER IRREPARABLE HARM SHOULD A PRELIMINARY INJUNCTION NOT BE ISSUED TO PREVENT THE NATIONAL GRANGE FROM GOING THROUGH WITH ITS "GRANGE TRIAL" WHICH IS BASED ON SHAM CHARGES BROUGHT BY EDWARD LUTTRELL.

> ***"Oh, what a tangled web we weave, When first we practise to deceive!"***
>
> - Scott, Walter. ***Marmion: A Tale of Flodden Field*** J. Ballantyne and Co., London (1808)

Despite the numerous mentions of "due process protections" by the National Grange in its opposition papers, the "Grange Trial" is nothing more than a sham. In an attempt to provide some perception of legitimacy to the "Grange Trial", Luttrell submitted a declaration in opposition to McFarland's motion for preliminary injunction. In paragraph 5 of his declaration, he declares:

> In July 2012, I became aware of McFarland's actions regarding the 2009 settlement agreement between the California State Grange and the Vista Grange.

This statement is entirely disingenuous! Luttrell and the National Grange were informed by McFarland through conversations and various emails regarding the details of the settlement of the

Vista lawsuit. **(Decl. of McFarland re: Reply, ¶¶** 3, 4, 6, 7; **Exhibits T** and **U.** Further, on August 15, 2010, McFarland sent a personal email to Edward Luttrell stating as follows:

> Worthy Master -
>
> Per the request of the Executive Committee of the National Grange, I am providing you with a summary of the settlement terms in the matter of California State Grange vs. Vista Grange, dismissed with prejudice on December 14, 2009.
>
> The terms of this settlement were decided in meetings of the California State Grange Executive Committee in Executive Session. Please respect the confidentiality of this information.
>
> Terms of the Settlement:
>
> ***The Charter of Vista Grange was reinstated.***
>
> ***Vista Grange filed amended articles of incorporation with the California Secretary of State reinstating the corporation as Vista Grange #609, Incorporated.***
>
> Vista Grange to sell it's real property consistent with Grange law, with the approval of the Executive Committee, to be sold at fair market value for the highest possible price (the hall has not been sold, to date).
>
> Proceeds from the sale after costs will be distributed through escrow: 20% going to the CSG and 80% disbursed for purposes approved by the CSG Executive Committee to include scholarships for fields related to agriculture, and books and educational materials for children in the Vista community.
>
> General releases, on both sides.
>
> Dismissal of action by the CSG.
>
> Faithfully,
>
> - Bob (Emphasis added.)

(Decl. McFarland re: Reply, ¶¶ 5-6; **Exhibit T.)**

A further email was sent to Luttrell and the National Grange on November 1, 2010 which laid out the same terms and provided the California State Grange's Board of Directors approval. **(Decl. of McFarland re: Reply, ¶**7.) From November of 2010 until the charges were filed by Luttrell on August 1, 2012, no one from the National Grange contacted McFarland with further inquiries regarding the Vista settlement. **Decl. of McFarland re: Reply ¶8.**

However, on the first day that McFarland returned from a 60 day suspension, Luttrell brought new charges against McFarland based on facts which Luttrell had known about for over 20 months, despite what he now declares under penalty of perjury that he just became aware of the basis for such charges in July 2012. If this is the type of half-truth that Luttrell would assert in a public document under sworn testimony, while knowing that there is documentary evidence contrary to such an assertion, one can only imagine how this supposed "Grange Trial" will be conducted.

Further, the National Grange is demanding that McFarland expend over twenty-five percent of his current annual salary to be able to present evidence and witnesses for "Grange Trial" expenses, only to have Luttrell's "cronies"[2] determine what evidence McFarland will be permitted to enter on his own behalf, not permit any cross-examination, and then should they rule in Luttrell's favor not only does McFarland lose over $10,000.00 but he will most certainly be right back in this courtroom to contest a motion for injunctive relief by the National Grange in order to enforce the outcome of its "Grange Trial".

Additionally, since learning of the California State Grange's assertion that an officer can only be removed by the Board of Directors, the National Grange has now brought charges against John Luvaas, a member of the California State Grange Board of Directors and notified him of his "Grange Trial". **(Decl. of McFarland re: Reply,** ¶ 13.) The clear intent of the National Grange is to expel enough Directors through "Grange Trials" in order to fill the Board with members favorable to the National Grange, and then to take over control of a California Corporation.

In the meantime, the National Grange will suffer no harm from the issuance of the requested injunction. First, it chose this very forum from which to seek relief by ignoring the use of an Arbitration Panel, as required by its bylaws, and filing this action instead. Second, although the National Grange asserts that other States may attempt similar maneuvers, if the National Grange is attempting to usurp the power of a corporation's board of directors based on "sham" allegations, then entities in other states should challenge such action. Finally, the National Grange alleges it will be

[2] Although Lutrell declares that he had someone other than himself select the trial panel for the McFarland "Grange Trial", that is contrary to the letter from Steven Verill. **See Exhibit "H".** It is telling that neither Mr. Verrill nor Mr. Gentry submitted a declaration stating as much.

irreparably harmed should this court "interfere" with its internal rules; however, such an assertion is preposterous! The National Grange chose to file a lawsuit and seek injunctive relief from this very Court. It defies all logic for the National Grange to now claim that should this Court not side in its favor, that it will be irreparably harmed. Simply put, the National Grange cannot have its cake and eat it too.

An injunction is necessary to stop the National Grange's interference with McFarland's employment until this matter can be resolved on the merits at trial.

D. A PRELIMINARY INJUNCTION IS NECESSARY TO PRESERVE THE STATUS QUO.

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 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.

The members of the California State Grange unanimously passed a resolution at the Annual Meeting in October 2012, to disregard the National Grange's suspensions by Luttrell based on his "sham" allegations. **(Exhibit G.)** Further on March 8, 2013, the Board of Directors of the California State Grange unanimously passed a resolution stating: *"This corporate body resolves we support our State Master Bob McFarland and our executive committee for actions taken during the last year and continue to do so."* **(Decl. of McFarland re: Reply, ¶12; Exhibit V.)**

Based on the foregoing, the California State Grange's Board of Directors is one hundred percent in support of McFarland serving as its President. As such, the status quo should be preserved by an injunction being issued to preclude the National Grange from interfering with McFarland's employment contract.

Additionally, it has been mentioned that the National Grange has begun to bring charges and set "Grange Trials" for members of the Board of Directors who have supported McFarland. **(Decl. of McFarland re: Reply, ¶** 13.) Should the Court not issue a preliminary injunction to stop these activities until this case can be resolved on its merits at trial, then there will be multiple judicial

proceedings seeking injunctive relief and legal damages which could be avoided by the issuance of an injunction. Therefore, in order to halt the potential multiplicity of judicial proceedings and preserve the status quo, this Court should issue a preliminary injunction until this matter can be resolved at trial.

III. CONCLUSION

Based on the foregoing, McFarland respectfully requests that the Court grant a preliminary injunction to stop the National Grange from interfering with his employment contract until this matter can be determined on its merits at trial.

Dated: March 26, 2013

ELLIS LAW GROUP, LLP

By _____
William A. Lapcevic
Attorney for
DEFENDANT ROBERT MCFARLAND