

1 Mark E. Ellis - 127159  
William A. Lapcevic - 238893  
2 Elizabeth A. Handelin - 275710  
ELLIS LAW GROUP, LLP  
3 740 University Avenue, Suite 100  
Sacramento, CA 95825  
4 Tel: (916) 283-8820  
Fax: (916) 283-8821

5 Attorneys for Defendant ROBERT MCFARLAND

FILED  
ENDORSED

2013 MAY -1 PM 2:33

LEGAL PROCESS #2

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SACRAMENTO

10  
11 THE NATIONAL GRANGE OF THE ORDER  
OF PATRONS OF HUSBANDRY, a  
12 Washington, D.C., nonprofit corporation,

13 Plaintiff,

14 v.

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

17 Defendants.

18 ROBERT MCFARLAND, an individual  
19 Cross-Complainant

20 v.

21 THE NATIONAL GRANGE OF THE ORDER  
OF PATRONS OF HUSBANDRY, a  
Washington, D.C., nonprofit corporation, and  
22 MARTHA STEFENONI, an individual, and  
EDWARD L. LUTTRELL, an individual, and  
23 DOES 1-10, inclusive  
24 Cross-Defendants

Case No.: 34-2012-00130439

**CROSS-PLAINTIFF ROBERT  
MCFARLAND'S QUALIFIED NON-  
OPPOSITION TO THE DEMURRER TO  
MCFARLAND'S CROSS-COMPLAINT**

**DATE: May 14, 2013  
TIME: 2:00 p.m.  
DEPT: 53**

*Cross-Complaint Filed: November 15, 2012*

1 QUALIFIED NON-OPPOSITION TO DEMURRER

2 Cross-Defendants the National Grange of the Order of Patrons of Husbandry and Edward  
3 Luttrell have filed a demurrer to Robert McFarland's ("McFarland") cross-complaint filed November  
4 15, 2012. McFarland does not concede with the merits of Defendants' demurrer. However,  
5 McFarland will be filing an amended complaint, to be filed and served prior to the hearing scheduled  
6 on May 14, 2013.

7  
8 "Any pleading may be amended once by the party of course, and without  
9 costs, at any time before the answer or demurrer is filed, or after  
10 demurrer and before the trial of the issue of law thereon, by filing the  
11 same as amended and serving a copy on the adverse party, and the time  
12 in which the adverse party must respond thereto shall be computed from  
13 the date of notice of the amendment."

14 **Code Civ. Proc. § 472.**

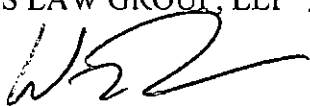
15 A plaintiff has the right to amend his or her pleading after a demurrer is filed, up to the time of  
16 the hearing on the demurrer. (*Barton v. Khan* (2007) 157 Cal.App.4<sup>th</sup> 1216, 1221.) The filing of the  
17 first amended complaint will then render the demurrer moot, since the amended pleading will then  
18 superseded the original, which will cease to perform any function as a pleading. (*Sylmar Air*  
19 *Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal.App.4<sup>th</sup> 1049, 1054.) The effect of  
20 amending the complaint before the demurrer hearing results in the demurrer going off calendar. (*Ibid.*;  
21 See also Weil & Brown, California Practice Guide: Civil Procedure Before Trial § 7:122.16 p. 7(I)-47  
(Rutter Group 2011).)

22 Since McFarland will file an amended complaint prior to the hearing on May 14, 2013, there  
23 will be no demurrer at issue to oppose on the date currently scheduled for the present demurrer.  
24 However, because McFarland reserves all rights with respect to any arguments made in Cross-  
25 Defendants' demurrer which Cross-Defendants' may make again at a future time in this litigation,  
26 McFarland is filing this qualified non-opposition.  
27  
28

1 Dated: May 1, 2013

2 ELLIS LAW GROUP, LLP

3  
4 By

  
\_\_\_\_\_  
William A. Lapcevic  
Attorney for Defendant  
ROBERT MCFARLAND

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I, Jennifer E. Mueller, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is 740 University Avenue, Suite 100, Sacramento, CA 95825.

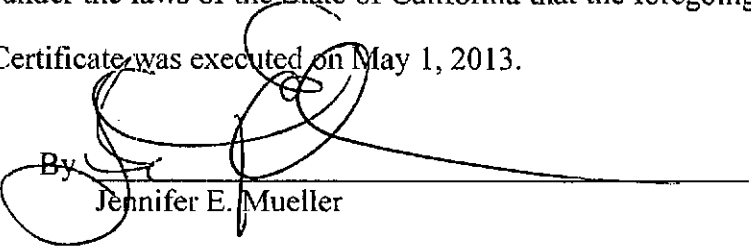
On May 1, 2013, I served the following document(s) on the parties in the within action:

CROSS-PLAINTIFF ROBERT MCFARLAND'S NON- OPPOSITION TO CROSS-  
DEFENDANTS' DEMURRER TO CROSS-COMPLAINT

<b>X</b>	<b>VIA OVERNIGHT SERVICE:</b> The above-described document(s) will be delivered by overnight service, to the following:
----------	---

Martin Jensen Thomas Riordan Porter Scott 350 University Avenue Suite 200 Sacramento, CA 95825	Attorneys for Plaintiff THE NATIONAL GRANGE OF THE ORDER OF PATRONS OF HUSBANDRY
Robert Swanson Daniel Stouder Boutin Jones, Inc. 555 Capitol Mall Suite 1500 Sacramento, CA 95814	Attorneys for Defendant THE CALIFORNIA STATE GRANGE

I declare under penalty of perjury under the laws of the State of California that the foregoing is a true and correct statement and that this Certificate was executed on May 1, 2013.

By   
Jennifer E. Mueller