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FILED
ENDORSED

2013 MAY -1 PM 2:35

LEGAL PROCESS #2

5 Attorneys for Defendant ROBERT MCFARLAND
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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
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Case No.: 34-2012-00130439

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

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

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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.4th 1216, 1221.) The filing of the
17 first amended complaint will then render any responsive pleading moot, since the amended pleading
18 will then superseded the original, which will cease to perform any function as a pleading.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.4th 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
22 (Rutter Group 2011).)

23 Since McFarland will file an amended complaint prior to the hearing on May 14, 2013, there
24 will be no demurrer or motion to strike at issue to oppose on the date currently scheduled. However,
25 because McFarland reserves all rights with respect to any arguments made in Cross-Defendants'
26 motion to strike which Cross-Defendants' may make again at a future time in this litigation, McFarland
27 is filing this qualified non-opposition.
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2 Dated: May 1, 2013

3 ELLIS LAW GROUP, LLP

4 By 

5 William A. Lapcevic
6 Attorney for Defendant
7 ROBERT MCFARLAND
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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' MOTION TO STRIKE CROSS-COMPLAINT

☒ **VIA OVERNIGHT SERVICE:** The above-described document(s) will be delivered by overnight service, to the following:

Martin Jensen
Thomas Riordan
Porter Scott
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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