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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 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 DAMIAN PARR,

Defendants.

THE CALIFORNIA STATE GRANGE, a
California nonprofit,

Cross-Complainant,

v.

THE NATIONAL GRANGE OF THE ORDER
OF PATRONS OF HUSBANDRY, a
Washington, D.C. nonprofit corporation, and
EDWARD L. LUTTRELL, an individual,
and ROES 1 through 10, inclusive,

Cross-Defendants.

Case No. 34-2012-00130439

**NATIONAL GRANGE AND EDWARD LUTTRELL'S
REPLY TO THE
CALIFORNIA STATE GRANGE'S
OPPOSITION TO THE DEMURRER**

Date: May 14, 2013

Time: 2:00 p.m.

Dept: 53

Complaint Filed: October 1, 2012

INTRODUCTION

The California State Grange oddly asks this court to pretend the bylaws of the Order do not exist, or cannot be judicially noticed, even while relying upon this court's orders interpreting those same bylaws in this exact same action. There is no dispute as to the existence or accuracy of the bylaws in the action, which actually define the very existence of the California Grange as a corporation and its relationship as a constituent part of the National Grange. Moreover, all the alleged conduct regarding the payment of dues by subordinate Granges only makes sense within the context of the bylaws, notice of which is not requested for "the truth of its contents," but just the existence of its contents. In opposing a demurrer, the California State Grange may of course argue that the National Grange's interpretation of the provisions of the bylaws mean something other than what the National Grange proposes, but it would be nonsensical to ignore the existence of the words altogether. The text of the bylaws is inextricably intertwined with the California State Grange's claim for the payment of dues manifestly arising exclusively out of the bylaws.

The National Grange is aware of this court's previous rulings regarding the preliminary injunctions, the second of which was entered well after the instant demurrer was filed. While preserving the issue regarding the exercise of jurisdiction by California courts, the National Grange will refrain from unnecessarily rehashing the same arguments here. In the context of Robert McFarland's request to temporarily stay the National Grange's internal trial, this court narrowly granted relief on the ground that it was "preserving the status quo." But that is not the question here, where the California State Grange seeks to have the court actively intervene in the payment and distribution of dues, even though there has still been no allegation by the California State Grange that the National Grange has "clearly violated" the bylaws of the Order and no citation to authority holding that California courts should get involved in deciding internal governance questions such as the distribution of funds among the various entities within a private nonprofit organization. Unlike McFarland, an individual, the California State Grange and subordinate Granges (as well as the National Grange) only exist and function as Granges through bylaws of the Order. The fact that the California State Grange is separately incorporated in California does not insulate it from obligations it has undertaken specifically as part of the Order of the Grange.

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1 must then follow that the same set of bylaws establishing a binding dues relationship within the Order
2 also encompasses the National Grange as a party to the contractual relationship. The California State
3 Grange baldly denies the National Grange is a party to the contracts, but does not address the National
4 Grange's argument that the bylaws of both the California State Grange and National Grange expressly
5 describe the National Grange's proper role in determining the dues to be paid, and its effect on the
6 California State Grange's right to dues. As such, the demurrer should be sustained regarding the second
7 cause of action.

8 **C. Intentional Interference With Prospective Economic Advantage Is Also**
9 **Precluded Against the National Grange and Luttrell.**

10 The California State Grange does not set forth any authority indicating that the intentional
11 interference tort should be treated any differently than the interference with contract tort in the second
12 cause of action. Instead, it merely points to a "counterfeit website" purportedly established by the
13 National Grange, but nowhere alleges facts indicating how such a website affects the payment of dues
14 sought by the California State Grange, which is the only economic advantage alleged in the Cross-
15 Complaint. The California State Grange does not allege that the dues are collected through the website,
16 or that the website has fooled or confused any of the subordinate Granges. Alleging "conversion" of the
17 dues in paragraph 29 of the Cross-Complaint simply repeats the allegations of the first cause of action,
18 and is in no manner independent of the specific economic relationship among the parties under the
19 bylaws. The National Grange is certainly not a stranger to the economic relationship between the
20 California State Grange and the subordinate Granges. Hence, the demurer should be sustained
21 regarding the third cause of action.

22 **D. The California State Grange Does Not Point to Any Unfair or Unlawful**
23 **Conduct Within the Meaning of Business and Professions Code Section 17200.**

24 The California State Grange initially quibbles that the National Grange demurs only to the
25 allegations of "unfair" conduct, but the Cross-Complaint itself alleges in paragraph 35 simply that
26 "unfair competition has caused the California State Grange to suffer injury." It nowhere alleges that the
27 California State Grange was a business competitor of the National Grange, but contends that whether it
28 can be a business competitor is a factual issue, rather than one of law. It is incorrect. They are merely

1 separate pieces of a single organization of the Order of the Grange. In addition, the authorities cited by
2 the National Grange and unchallenged by the California State Grange establish that the term unfairness
3 necessarily encompasses both "unlawful" or "fraudulent" practices. If practices are not unfair, they are
4 not unlawful or fraudulent. Moreover, the factual allegations set forth in paragraphs 8-11 of the Cross-
5 Complaint do not constitute unlawful or fraudulent activity by the National Grange.

6 Paragraph 8 of the Cross-Complaint alleges simply that following the suspension of the
7 California State Grange's Charter, the National Grange indicated that the subordinate Granges should
8 send their dues to the National Grange. Even if the National Grange "threatened" the subordinate
9 Granges with discipline under the rules of the Order for defiance, that would not constitute unlawful or
10 fraudulent conduct under California law, even if mistaken.

11 Paragraph 9 of the Cross-Complaint uses the term "counterfeit website," but nowhere alleges
12 that the subordinate Granges were somehow misled by the websites so as to mistakenly send their dues
13 to the wrong entity. Nothing in law precludes the National Grange from telling members and
14 subordinate Granges how the rules of the Order are to proceed while the Charter of the California State
15 Grange is suspended under the bylaws.

16 Paragraph 10 of the Cross-Complaint merely alleges that the motive of the National Grange was
17 to cause division among the ranks of the subordinate Granges. The National Grange is not precluded by
18 any law from suspending the Charter of the California State Grange and its Master for violations of
19 bylaws. This action does not preclude the California State Grange from conducting business as a
20 California corporation, but the existing State Grange may not do so as a constituent member of the
21 Order while flouting its rules. It is certainly not unlawful for the National Grange to refuse participation
22 of the California State Grange in the National Grange's own annual meeting.

23 Paragraph 11 of the Cross-Complaint merely alleges that the national Grange has erroneously
24 claimed governing power over certain activities of the California State Grange as set forth in the
25 bylaws. Even if the National Grange were deemed mistaken about its authority under the bylaws that
26 does not constitute unlawful or fraudulent activity within the meaning of section 17200.

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1 **E. The California State Grange Alleges No Facts To Support Unjust Enrichment.**

2 The California State Grange relies on *Peterson v. Cellco Partnership* (2008) 164 Cal.App.4th
3 1583, 1593, but neglects to point out that the demurrer in that case was sustained against unjust
4 enrichment precisely because, as here, the plaintiff could allege no other violation upon which the
5 recovery of funds could be deemed unjust. More importantly, the California State Grange simply
6 ignores the clear movement in California law away from a stand-alone cause of action for unjust
7 enrichment, which is actually only a remedy. *In re iPhone Application Litig.* (N.D. Cal. 2012) 844
8 F.Supp.2d 1040, 1075, sets forth the applicable authority as follows:

9 Plaintiffs, on behalf of the iDevice Class, allege a claim against Apple and the Mobile
10 Industry Defendants for Assumpsit and Restitution. Notwithstanding earlier cases
11 suggesting the existence of a separate, stand-alone cause of action for unjust
12 enrichment, the California Court of Appeals has recently clarified that “[u]njust
13 enrichment is not a cause of action, just a restitution claim.” *Hill v. Roll Int’l Corp.*, 195
14 Cal.App.4th 1295, 1307, 128 Cal. Rptr. 3d 109 (2011); accord *Levine v. Blue Shield of*
15 *Cal.*, 189 Cal.App.4th 1117, 1138, 117 Cal. Rptr. 3d 262 (2010); *Melchior v. New Line*
16 *Prods., Inc.*, 106 Cal.App.4th 779, 793, 131 Cal. Rptr. 2d 347 (2003); *Durell v. Sharp*
17 *Healthcare*, 183 Cal.App.4th 1350, 1370, 108 Cal. Rptr. 3d 682 (2010). In light of this
18 recent persuasive authority, this Court has previously determined that “there is no cause
19 of action for unjust enrichment under California law.” *Fraley v. Facebook*, 830
20 F.Supp.2d 785, 2011 WL 6303898, at *23 (N.D. Cal. 2011); accord *Ferrington v.*
21 *McAfee, Inc.*, No. 10-cv-01455-LHK, 2010 U.S. Dist. LEXIS 106600, 2010 WL
22 3910169, at *17 (N.D. Cal. 2010). Other courts have similarly reached this conclusion.
23 See *Robinson v. HSBC Bank USA*, 732 F.Supp.2d 976, 987 (N.D. Cal. 2010) (Illston, J.)
24 (dismissing with prejudice plaintiffs’ unjust enrichment claim brought in connection
25 with claims of misappropriation and violation of the UCL because unjust enrichment
26 does not exist as a standalone cause of action); *LaCourt v. Specific Media, Inc.*, No.
27 SACV10-1256-GW(JCGx), 2011 U.S. Dist. LEXIS 50543, 2011 WL 1661532 at *8
28 (C.D. Cal. Apr. 28, 2011) (dismissing unjust enrichment claim because it “cannot serve
as an independent cause of action”); *In re DirecTV Early Cancellation Litig.*, 738
F.Supp.2d 1062, 1091-92 (C.D. Cal. 2010) (same). Thus, Plaintiffs’ unjust enrichment
claim does not properly state an independent cause of action and must be dismissed. See
Levine, 189 Cal.App.4th at 1138.

 The demurrer to the fifth cause of action should thus be sustained.

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1 **F. The Court Should Not Exercise Jurisdiction Regarding Declaratory Relief.**

2 The California State Grange tacitly concedes that if the court declines to exercise jurisdiction as
3 to the internal governance of the Order of the Grange and its finances, this cause of action cannot stand.
4 Consequently, the demurrer to the sixth cause of action should be sustained.

5 **G. The Court Should Not Grant the California State Grange Leave to Amend Its**
6 **Cross-Complaint Absent a Showing of How It Would State a Cause of Action.**

7 Upon sustaining a demurrer, the court must decide whether there is a reasonable possibility that
8 the defect can be cured by amendment. The burden of proving such reasonable possibility is squarely
9 on the plaintiff. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Leave to amend is not automatic and
10 should not be granted where there is no likelihood of the California State Grange being able to amend
11 its Cross-Complaint. The bylaws of the Order of the Grange freely accepted by the California State
12 Grange are what they are; the only question is whether the California State Grange is required to follow
13 them. The California State Grange does not suggest how the allegations of its Cross-Complaint could
14 be alleged to repair any of its causes of action.

15 **CONCLUSION**

16 For all the foregoing reasons, the National Grange demurrer should be sustained in its entirety
17 without leave to amend.

18 Date: May 6, 2013

PORTER SCOTT
A PROFESSIONAL CORPORATION

20 By Thomas L. Riordan
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4 **DECLARATION OF SERVICE**

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

7 On the date indicated below, I served the following:

8
9 **NATIONAL GRANGE AND EDWARD LUTTRELL'S REPLY
TO THE CALIFORNIA STATE GRANGE'S OPPOSITION TO THE DEMURRER**

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

13 ☐ BY PERSONAL SERVICE. I caused such document to be delivered by hand to the person(s)
14 listed below.

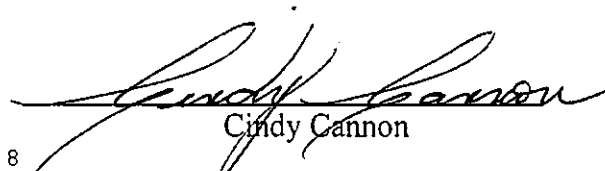
15 ☐ BY FACSIMILE TRANSMISSION AND MAIL. I caused such document to be transmitted via
16 facsimile to the numbers below, with copies following by United States mail at Sacramento,
California.

17 ☐ BY OVERNIGHT DELIVERY. I caused such document to be delivered overnight to the office
18 of the person(s) listed below.

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25 I hereby certify under the penalty of perjury that the foregoing is true and correct. Executed at
26 Sacramento, California on May 7, 2013.

27
28 
Cindy Cannon

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**NATIONAL GRANGE AND EDWARD LUTTRELL'S REPLY TO THE CALIFORNIA STATE
GRANGE'S OPPOSITION TO THE DEMURRER**