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THE NATIONAL GRANGE OF THE ORDER OF PATRONS OF HUSBANDRY and
EDWARD L. LUTTRELL

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.

ROBERT MCFARLAND, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

Case No. 34-2012-00130439

**NATIONAL GRANGE AND EDWARD
LUTTRELL'S MOTION TO STRIKE
ROBERT MCFARLAND'S FIRST
AMENDED CROSS-COMPLAINT AND
SUPPORTING POINTS AND
AUTHORITIES**

DATE: June 25, 2013

TIME: 2:00 p.m.

DEPT: 53

Complaint Filed: October 1, 2012

1 Cross-Defendants The National Grange of the Order of Patrons of Husbandry and Edward L.
2 Luttrell hereby move to strike McFarland's first amended cross-complaint's allegations in paragraphs
3 54 and 62 (fifth and sixth causes of action, respectively) requesting punitive damages.

4 **MEMORANDUM OF OF POINTS AND AUTHORITIES**

5 *PM Group, Inc. v. Stewart* (2007) 154 Cal.App.4th 55, 69, notes that "punitive damages are
6 not available in actions arising out of contract, including interference with contract. (*Applied Equipment*
7 *Corp. v. Litton Saudi Arabia Ltd., supra*, 7 Cal.4th at p. 516.)" There is likewise no basis to award
8 punitive damages stemming from the intentional interference with prospective economic advantage,
9 which is deemed less severe than tortious interference with an actual contract, since the contract has not
10 yet been formalized. (*Kasparian v. County of Los Angeles* (1995) 38 Cal.App.4th 242, 266.) Moreover,
11 no unlawful conduct has been alleged, let alone malice, fraud or oppression within the meaning of Civil
12 Code section 3294. There can be no punitive damages awarded where the only alleged basis for the tort
13 was violation of bylaws. (See *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134,
14 1158-1159.)

15 In this same action, on May 14, 2013, this court recently granted the identical motion to strike
16 filed by the National Grange and Edward L. Luttrell as against the California State Grange regarding
17 the identical causes of action. There is no basis for a different result here. Although cross-defendants
18 have filed an answer herewith, the motion to strike punitive damages here should be granted.

19 Dated: May 23, 2013

PORTER SCOTT
A PROFESSIONAL CORPORATION

21 By Thomas L. Riordan
22 Martin N. Jensen
23 Thomas L. Riordan
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3 **DECLARATION OF SERVICE**

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

7 That on the date below, I served the following:

8 **NATIONAL GRANGE AND EDWARD LUTTRELL'S MOTION TO STRIKE ROBERT**
9 **McFARLAND'S FIRST AMENDED CROSS-COMPLAINT AND SUPPORTING POINTS**
10 **AND AUTHORITIES**

11 on all parties in the said action as addressed below by causing a true copy thereof to be:

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

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

16 ☐ **BY OVERNIGHT DELIVERY.** I caused the above-listed document(s) to be delivered by
17 overnight delivery to the office of the person(s) listed below:

18 ☐ **BY FACSIMILE.** I caused the above-listed document(s) to be transmitted by facsimile
19 transmission from (916) 927-3706 to the facsimile number listed below. The transmission was
20 reported as completed and without error. A copy of the transmission report is attached. The
transmission report was properly issued by the transmitting facsimile machine.

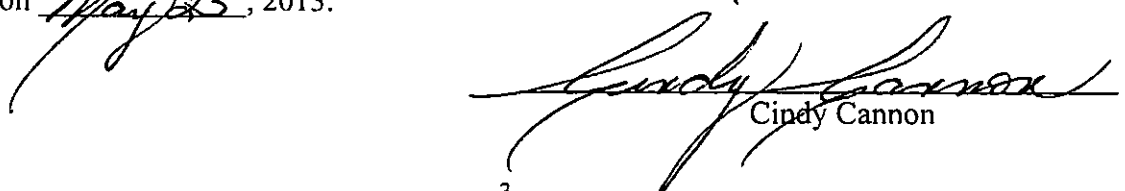
21 ***Attorneys for Robert McFarland***

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21 ***Attorneys for Defendants The California State Grange,***
John Luvaas, Gerald Chernoff and Damian Parr

22 Robert D. Swanson
23 Daniel S. Stouder
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Sacramento, CA 95814

26 I declare under penalty of perjury that the foregoing is true and correct. Executed at Sacramento,
27 California, on May 23, 2013.

28 
Cindy Cannon