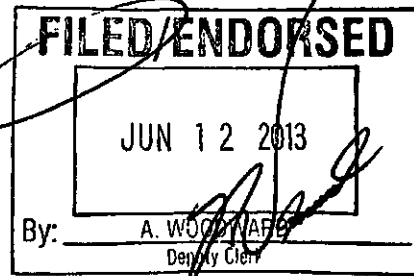


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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SACRAMENTO

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 DAMINA PARR,

17 Defendants.

18  
19 AND RELATED CROSS-ACTION  
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Case No.: 34-2012-00130439

**OPPOSITION TO THE NATIONAL  
GRANGE AND EDWARD L. LUTTRELL'S  
MOTION TO STRIKE ROBERT  
MCFARLAND'S CROSS-COMPLAINT**

DATE: June 25, 2013  
TIME: 2:00 p.m.  
DEPT: 53

Complaint Filed: October 1, 2012  
Trial Date: None set

1 Cross-Complainant Robert McFarland (herein after "McFarland") submits the following points  
2 and authorities in opposition to Cross-Defendants National Grange ("National Grange") and Edward L.  
3 Luttrell's ("Luttrell") Motion to Strike.

#### 4 I. INTRODUCTION

5 The National Grange and Luttrell have brought this Motion to Strike "lines 54 and 62 (fifth and  
6 sixth causes of action, respectively)" of Cross-Complainant Robert McFarland's ("McFarland") First  
7 Amended Cross-Complaint ("FAC").<sup>1</sup> This motion must be denied based on the following:

8 *First*, McFarland is entitled to punitive damages for his fourth cause of action for intentional  
9 interference with contractual relations because the cause of action does not arise out of any contractual  
10 obligations between McFarland and the National Grange or Luttrell. *See Cal. Code of Civ. Proc.*  
11 *§3294(a); Duff v Engelberg* (1965) 237 Cal.App.2d 505, 508-509.

12 *Second*, McFarland is entitled to punitive damages for his fifth cause of action for intentional  
13 interference with prospective economic advantage because this cause of action does not arise from any  
14 contractual obligations between McFarland, the National Grange, and Luttrell. *See Cal. Civ. Code.*  
15 *§3294(a); Ramona Manor Convalescent Hosp. v Care Enterprises* (1996) 177 Cal.App.3d 1120,  
16 1141-1142.

17 *Third*, the National Grange and Luttrell's supporting authority is distinguishable and inapposite  
18 to this action and does not speak to the present circumstances because defendants were not engaged in  
19 a contractual relationship from which the alleged tort claims have arisen.

20 Based on the foregoing, National Grange and Luttrell's motion to strike must be denied.

#### 21 II. LAW AND ARGUMENT

22 The Motion to Strike herein does not dispute the adequacy of the two intentional interference  
23 torts themselves, nor do defendants argue that McFarland has failed to sufficiently plead any of the  
24 required elements of such claims. Instead, defendants merely assert that "lines 54 and 62" must be  
25

26 <sup>1</sup> Lines 54 and 62 do not correspond to the McFarland's fifth and sixth causes of action, respectively. Line 54 refers to  
27 McFarland's fourth cause of action for intentional interference with contractual relations. *See* FAC ¶54. Line 62 refers to  
28 McFarland's fifth cause of action for intentional interference with prospective economic advantage. *See* FAC ¶62.  
Assuming, defendants have misstated the numerated causes of action, this opposition will only address McFarland's request  
to strike punitive damages in line 54 and 62 of his first amended cross-complaint.

1 stricken because, as a matter of law, McFarland is not entitled to an award of punitive damages in  
2 relation to the specific causes of action. However, the California Civil Code and applicable case law  
3 clearly show that McFarland is entitled to punitive damages since the alleged torts did not arise from  
4 any contractual obligations between McFarland and defendants National Grange and Luttrell.

5 **A. Legal Standard Of Review For Determination Of A Motion To Strike**

6 As with demurrers, a motion to strike is generally disfavored as the policy of law is to construe  
7 the pleadings liberally with a view towards substantial justice. *See California Code of Civ. Proc.*  
8 **§452**. In ruling on a motion to strike, the allegations in the complaint are presumed true and  
9 considered in the context of the complaint. Clauson v Sup. Ct. (1998) 67 Cal.App.4th 1253, 1255. In  
10 the context of punitive damages, a motion to strike may be granted where the requested damages are  
11 not legally recoverable as a matter of law. *See Rylaaersdam, et al., Cal. Prac. Guide: Civ. Pro.*  
12 *Before Trial* (West 2013 ed.) ¶7:186.

13 **B. As A Matter Of Law, McFarland Is Entitled To Punitive Damages For His Fourth Cause**  
14 **Of Action For Intentional Interference With Contractual Relations.**

15 California Civil Code §3294(a) provides:

16 (I)n an *action for the breach of an obligation not arising from contract*,  
17 where it is proven by clear and convincing evidence that the defendant  
18 has been guilty of oppression, fraud, or malice, the plaintiff, in addition  
19 to the actual damages, may recover damages for the sake of example and  
by way of punishing the defendant. **Cal. Civ. Code §3294(a)** (emphasis  
added).

20 It is black letter law that punitive damages are allowed in actions for intentional interference  
21 with contractual relations where the plaintiff is able to show that the defendant is guilty of oppression,  
22 fraud, or malice. Duff v Engelberg, *supra*, 237 Cal.App.2d at p.508-509; Ramona Manor  
23 Convalescent Hospital v Care Enterprises, *supra*, 177 Cal.App.3d at p.1141-1142.

24 Here, McFarland has not pled that the intentional interference with contractual relations was the  
25 result of any breach of contract. Rather, McFarland alleges that the intentional interference stems from  
26 the wrongful publication of false facts and dissemination of those facts to California State Grange  
27 (“CSG”) members by defendants National Grange and Luttrell. *See* FAC ¶50. Defendant Luttrell’s  
28 wrongful action does not arise out of a contractual obligation between the National Grange and

1 McFarland because there is simply no contract between McFarland and the National Grange. The  
2 contract being interfered with is between McFarland and CSG. See FAC ¶48. Defendants National  
3 Grange and Luttrell are merely third parties whose publication of knowingly false statements has  
4 interfered with McFarland's CSG employment contract by publishing and disseminating false  
5 statements about McFarland to the CSG membership.

6 Therefore, as a matter of law, McFarland is entitled to punitive damages for his fourth cause of  
7 action and defendants' Motion should be denied.

8 **C. As A Matter Of Law, McFarland Is Entitled To Punitive Damages For His Fifth Cause Of**  
9 **Action For Intentional Interference With Prospective Economic Advantage.**

10 As previously stated, punitive damages are allowed in actions for intentional interference with  
11 contractual relations **when the action does not arise out of a contractual obligation and the**  
12 **plaintiff is able to show that the defendant is guilty of oppression, fraud, or malice** [emphasis  
13 added]. See Cal. Civ. Code §3294(a); Ramona Manor Convalescent Hospital v Care Enterprises,  
14 supra, 177 Cal.App.3d at p.1141-1142. If defendants National Grange and Luttrell are found to have  
15 vexatiously and consciously disregarded McFarland's rights in his actual or future contractual  
16 relationships with the CSG, defendants actions will be considered malicious and the imposition of  
17 punitive damages permitted. Id. at 1141.

18 As previously stated, McFarland has not alleged that his fifth cause of action for intentional  
19 interference with prospective economic advantage arose out of a contractual obligation with the  
20 National Grange and Luttrell. Rather, the "intentional interference" arose from defendants' conduct in  
21 the publication and dissemination of a defamatory letter to the members of the State Grange. See FAC  
22 ¶¶55-61. All of defendants National Grange and Luttrell's actions are independent of the employment  
23 contract that McFarland has entered into with the CSG. See FAC ¶48. Defendants are third parties to  
24 whom McFarland owed no contractual duties, thus, the cause of action could not have arisen from any  
25 contractual obligations between McFarland and defendants National Grange and Luttrell.

26 Therefore, as a matter of law, McFarland is entitled to punitive damages and the defendants  
27 Motion to Strike should be denied.

28 ///

1 **D. Defendants' Supporting Legal Authority Is Inapposite and Should be Disregarded.**

2 In choosing to file this "knee-jerk" Motion to Strike, defendants have relied upon three  
3 distinguishable cases: **PM Group, Inc. v Stewart** (2007) 154 Cal.App.4th 55, 68-69 [**Plaintiff and**  
4 **defendant entered into an alleged contract** where plaintiff would promote defendant's music tour.  
5 Punitive Damages were not awarded because the interference claims arose out of the alleged contract.  
6 (emphasis added)]; **Applied Equipment Corp. v Litton Saudi Arabia Ltd.**, (1994) 7 Cal.4th 503,  
7 516 [**Plaintiff and defendant had entered into a subcontract** for the production of VA-145E  
8 electron tubes. Plaintiff was not awarded punitive damages because the obligation to provide the  
9 electron tubes, despite the willful breach, arose out of the subcontract. (emphasis added)]; and,  
10 **Kasparian v County of Los Angeles** (1995) Cal.App.4th 242, 266 [**Plaintiff and defendant were**  
11 **engaged in a prospective contractual** relationship and thus the interference arose from the  
12 prospective contractual obligation. (emphasis added)].

13 Contrary to the factual scenarios in the defendants' purported legal authority in support of their  
14 Motion, McFarland was never in a contractual (prospective or actual) relationship with the National  
15 Grange or Luttrell. Defendants are third parties to McFarland's employment contract with the CSG and  
16 due to their publication and dissemination of false statements have interfered with McFarland's  
17 employment contract. Therefore, McFarland's claims do not, and could not, have arisen out of a  
18 contractual relationship with National Grange and Luttrell, and thus, McFarland can recover punitive  
19 damages pursuant to **Cal. Civ. Code. §3294(a)**.

20 Additionally, Defendants assertion that **Korea Supply Co. v Lockheed Martin Corp.** (2003)  
21 29 Cal.4th 1134, stands for the proposition that punitive damages cannot be awarded when the only  
22 alleged basis for an interference tort is a violation of the bylaws is inapposite. The determination of  
23 whether or not this is a correct application of the law is irrelevant to this motion because McFarland's  
24 tortious interference claims do not stem from the "bylaws." As explained throughout this opposition,  
25 the tortious interference was the National Grange and Luttrell's dissemination of the defamatory letter  
26 to the CSG membership. The Defendants' wrongful conduct has nothing to do with the governing  
27 bylaws. Therefore, this Motion to Strike must be denied.

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Dated: June 12, 2013

By Amanda N. Griffith  
Amanda N. Griffith  
Attorney for Defendant/Cross-Complainant  
ROBERT MCFARLAND

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 June 12, 2013, I served the following document(s) on the parties in the within action:

**OPPOSITION TO THE NATIONAL GRANGE AND EDWARD L. LUTTRELL'S  
MOTION TO STRIKE ROBERT MCFARLAND'S CROSS-COMPLAINT**

X

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

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Sacramento, CA 95825

Attorneys for Plaintiff/Cross-Defendant  
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THE CALIFORNIA STATE GRANGE; JOHN  
LUVAAS, GERALD CHERNOFF AND  
DAMIAN PARR

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 June 12, 2013.

By   
Jennifer E. Mueller