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LEGAL PROCESS #3

PORTER | SCOTT

A PROFESSIONAL CORPORATION

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THE NATIONAL GRANGE OF THE ORDER OF PATRONS OF HUSBANDRY

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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
S REPLY IN SUPPORT OF
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

Cross-Defendants The National Grange of the Order of Patrons of Husbandry

I hereby reply in support of their motion to strike McFarland's first amended cross-complaint's allegations in paragraphs 54 and 62 (fifth and sixth causes of action, respectively) requesting punitive damages.

MEMORANDUM OF POINTS AND AUTHORITIES

PUNITIVE DAMAGES ARE NOT AVAILABLE FOR ALLEGED INTERFERENCE WITH CONTRACT OR PROSPECTIVE ECONOMIC ADVANTAGE.

McFarland's argument in support of punitive damages regarding these two related causes of action conflates their underlying elements with a potential remedy established by Civil Code section 3294, subdivision (a). McFarland avoided demurrer on the grounds that although the contractual and other economic relationships arose out of the structure of the Order established in the Bylaws, the National Grange was not alleged to be a party to the contractual agreements or economic relationships. That cannot be the same basis for preserving the punitive damage remedy. As a logical matter, there would be no reason to address the question of punitive damages as a remedy in the case law, assuming the causes of action themselves were to be rejected anyway because the defendant was deemed a party to the contract or economic relationship.

PM Group, Inc. v. Stewart (2007) 154 Cal.App.4th 55, 69, relies on the holding of the California Supreme Court in stating "punitive damages are not available in actions arising out of contract, including interference with contract. (*Applied Equipment Corp. v. Litton Saudi Arabia Ltd., supra*, 7 Cal.4th at p. 516)." McFarland suggests no basis on which the California Supreme Court's rationale of *Applied Equipment* should not also apply to the punitive damages for interference with the more tenuous economic relationship, as explained by *Kasparian v. County of Los Angeles* (1995) 38 Cal.App.4th 242, 266. McFarland's reliance upon *Ramona Manor Convalescent Hosp. v. Care Enters.* (1986) 177 Cal.App.3d 1120, 1141, is of little assistance to

1 him, because it was decided long before the California Supreme Court decided *Applied Equipment*
2 in 1994, and the ensuing Court of Appeal opinions were filed.

3 **CONCLUSION**

4 For all the foregoing reasons, this court should follow its ruling regarding the National
5 Grange's demurrer to the California State Grange's cross-complaint in this action and strike
6 punitive damages regarding the contract-related causes of action.

7 Dated: June 18, 2013

8 PORTER SCOTT
A PROFESSIONAL CORPORATION

9
10 By Thomas L. Riordan
11 Martin N. Jensen
12 Thomas L. Riordan
13 Attorneys for Plaintiffs and
14 Cross-Defendants
15 THE NATIONAL GRANGE OF
16 THE ORDER OF PATRONS OF
17 HUSBANDRY and EDWARD L.
18 LUTTRELL
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6 **DECLARATION OF SERVICE**

7 I am a resident of the United States and of the County, of Sacramento, California. I am
8 over the age of eighteen years and not a party to the within above-entitled action. My business
9 address is 350 University Avenue, Suite 200, Sacramento, California. That on the date below, I
10 served the following:

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

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

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

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

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

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

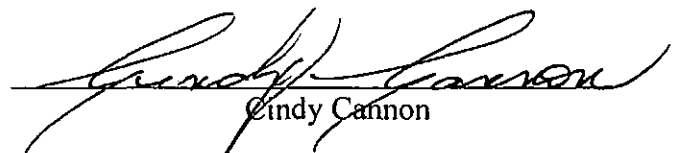
26 ***Attorneys for Robert McFarland***

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I declare under penalty of perjury that the foregoing is true and correct. Executed at
Sacramento, California, on June 18, 2013.


Cindy Cannon