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1 Mark E. Ellis - 127159
William A. Lapcevic - 238893
2 Amanda N. Griffith - 288164
ELLIS LAW GROUP, LLP
3 740 University Avenue, Suite 100
Sacramento, CA 95825
4 Tel: (916) 283-8820
Fax: (916) 283-8821
5

Attorneys for
6 DEFENDANT/CROSS COMPLAINANT ROBERT MCFARLAND

7
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 ROBERT MCFARLAND, an individual
Cross-Complainant

20 v.

21 THE NATIONAL GRANGE OF THE ORDER
OF PATRONS OF HUSBANDRY, a
22 Washington, D.C., nonprofit corporation, and
MARTHA STEFENONI, an individual, and
23 EDWARD L. LUTTRELL, an individual, and
SHIRLEY BAKER, an individual, and DOES 1-
24 10, inclusive

25 Cross-Defendants
26
27
28

Case No.: 34-2012-00130439

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF CROSS-
COMPLAINANT ROBERT MCFARLAND'S
OPPOSITION TO CROSS-DEFENDANTS
MARTHA STEFENONI AND SHIRLEY
BAKER'S SPECIAL MOTION TO STRIKE**

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Hon. David Brown

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I. INTRODUCTION

Cross-Defendants' special motion to strike fails because it is premised on erroneous factual circumstances. This motion falsely posits that the behavior, conduct, or communications of Cross-Defendants Martha Stefenoni ("Stefenoni") and Shirley Baker ("Baker") occurred in the public forum of the 2011 Annual California State Grange Convention. They contend that because of their actions on the floor of the 2011 Annual Convention this action falls within California Civil Code of Procedure §425.16(e)(3) and (e)(4). However, a cursory reading of this First Amended Cross-Complaint ("FACC") demonstrates such contentions are false.

Stefenoni and Baker's special motion to strike fails for the following reasons:

First, the principal "thrust" of Bob McFarland's ("McFarland") lawsuit does not involve acting in furtherance of a protected public activity. Baharian-Mehr v. Smith (2010) 189 Cal.App.4th 265, 272; Oales v. Nationwide Mutual Ins. Co. (2006) 135 Cal.App.4th 1501, 1509.

Second, the behavior, conduct, and communications of Stefenoni and Baker, as alleged in the FACC did not take place in the required public forum. CCP § 425.16(e)3, (e)4. Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (Rutter Group 2013) ¶ 7:749, p. 7(II)-25.

Third, the communications of Stefenoni and Baker that are at issue in the FACC did not arise out of a public issue or an issue that is in the interest of the public. World Financial Group, Inc. v. HBW Ins. & Financial Services (2009) 172 Cal.App.4th 1561, 1572; Weinberg v. Feisel (2003) 110 Cal.App.4th 1122, 1132.

Finally, even if Stefenoni and Baker were somehow able to satisfy the first prong of the anti-SLAPP analysis, the FACC and the declarations herein set forth sufficient facts to demonstrate McFarland's probability of success on the merits of his claims sufficient to defeat this motion. *See, e.g.* Sycamore Ridge Apts LLC v. Naumann (2007) 157 Cal.App.4th 1385, 1397; Weil & Brown, *supra*.

II. FACTUAL BACKGROUND

This action arises out of false and defamatory statements (and innuendos) published by Stefenoni and Baker arising from an internal investigation ordered by Edward Luttrell ("Luttrell"), Master of the National Grange. The investigation involved allegations of dishonesty and harassment by McFarland, as alleged originally by Stefenoni, herself.

1 **A. The California State Grange.**

2 The California State Grange ("CSG") is a nonprofit corporation, organized and existing under
3 the laws of the State of California. **McFarland Decl.**, ¶ 2. The CSG is made up of an Executive
4 Committee consisting of five (5) directors, a so-called overseer, and the Master. *Ibid.* At all relevant
5 times from October 2011 through the filing of the FACC, the CSG Directors were Shirley Baker, John
6 Luvaas, Damian Parr, Gerald Chernoff and Inger Bevans. *Ibid.* Martha Stefenoni was the Overseer
7 whose primary purpose was to assist the CSG Master and to act in the place of the Master should he be
8 removed from office. *Ibid.* McFarland was elected in 2009 as Master of the CSG; he was re-elected by
9 80% of the membership at the Annual Convention in October 2011. **McFarland Decl.**, ¶6.

10 **B. Luttrell Orders An Investigation Into Stefenoni's Allegations of McFarland.**

11 On October 5, 2011, Stefenoni, without consulting McFarland or any of the CSG Executive
12 Committee members, sent a letter to Luttrell in which she alleged that McFarland had falsified charter
13 applications, and was going to permit unqualified delegates to attend the upcoming October 2011 CSG
14 Annual Convention. **Lapcevic Decl.**, ¶ 2; **Exhibit ("Exh.") I**, pp. 75:9-107:11; **Exh. J**. Further,
15 Stefenoni's letter questioned the honesty and integrity of McFarland in relation to the above. **Exh. J**.

16 On or about October 10, 2011 (2 days prior to the official start of the convention), Luttrell flew
17 to California and hand delivered McFarland a letter. In the letter, Luttrell accepted as true all of
18 Stefenoni's (false) allegations. **McFarland Decl.**, ¶5. The letter further requested the Executive
19 Committee investigate McFarland's role in: (1) falsifying charters and membership applications; (2)
20 the credentials of alternate delegates affiliating with other Granges; and (3) harassment and bullying in
21 the State Grange office. **Exh. A**. Additionally, Luttrell provided a copy of his letter to Baker, who
22 was chairwoman of the Executive Committee; Luttrell requested and authorized the full Executive
23 Committee to conduct an investigation into the allegations against McFarland. **McFarland Decl.**, ¶ 5.

24 **C. The CSG 2011 Annual Convention.**

25 The CSG 2011 Annual Convention took place on October 12-16, 2011 in Palermo, California.
26 **McFarland Decl.**, ¶ 6. At the convention, John Luvaas ("Luvaas") was elected to a three-year term as
27 director, and was appointed chairman of the CSG Executive Committee. *Ibid.* Additionally, McFarland
28 was re-elected by 80% of the membership to serve another two-year term as CSG Master. **McFarland**

1 Decl., ¶7. Stefenoni was nominated as a candidate for CSG Master; however, she declined the
2 nomination after the delegates were seated. **McFarland Decl., ¶6.**

3 Throughout the convention, neither Baker, nor Stefenoni, nor anyone else, read Luttrell's
4 October 10, 2011 letter to the delegates on the convention floor. **McFarland Decl., ¶15.** It was not
5 announced that Luttrell ordered an investigation into McFarland's actions related to charter
6 applications, affiliate delegate credentials, or harassment in the CSG office. *Ibid.* Every motion and
7 discussion from the floor of the convention is recorded into the CSG Journal. **Bunker Decl., ¶ 6.**
8 There is no mention in the CSG Journal of Stefenoni, Baker, or anyone else, announcing or discussing
9 the subject of the McFarland investigation on the floor of the 2011 Convention. **Exh. M.**

10 **D. The Subsequent Investigation.**

11 Following the convention, the Executive Committee undertook an extensive investigation into
12 the allegations of improper conduct by McFarland, as authorized in Luttrell's October 10, 2011 letter.
13 **Luvaas Decl., ¶2.** The Executive Committee conducted staff interviews (including interviewing
14 McFarland) to investigate, among other things, whether affiliate delegates were improperly
15 credentialed; why the charter applications were erroneously dated; and, whether McFarland had
16 engaged in harassment and bullying in the office. **Luvaas Decl., ¶6; Exh. A.**

17 Pursuant to Luttrell's request that the Executive Committee report to him regarding its findings,
18 Luvaas sent the following reports to Luttrell.

19 1. a November 18, 2011 report, wherein the Executive Committee found no wrongdoing
20 by McFarland in relation to the allegations of bullying and harassment. Further, it reported that,
21 unknown to McFarland, staff members had independently changed the dates on charter applications
22 due to confusion. **Luvaas Decl., ¶ 6; Exh. t B.**

23 2. a December 23, 2011 report, wherein the Executive Committee found no wrongdoing
24 on the part of McFarland related to delegate credentials. **Luvaas Decl., ¶ 8; Exh. C.**

25 3. a January 24, 2012, "final report" by the Executive Committee, wherein the committee
26 found no wrongdoing or violation of Grange Laws by McFarland. **Luvaas Decl., ¶¶ 10-11; Exh. D.**

27 Prior to sending these confidential reports to Luttrell, Luvaas circulated the proposed reports to
28 each member of the Executive Committee with a request for their feedback or objections. **Luvaas**

1 Decl., ¶¶ 7, 9, 12. No objection or concern was ever expressed by any member of the Committee,
2 including Baker or Stefenoni. *Ibid.*

3 E. Stefenoni and Baker's Unauthorized "Minority Report" to Ed Luttrell.

4 On or about January 25, 2012, without raising one objection to the prior three (3) reports, and,
5 without consulting any of the Executive Committee, Stefenoni and Baker sent an unauthorized
6 "minority report" to Luttrell. **Luvaas Decl.**, ¶ 13; **Exh. E.** The "minority report" questioned
7 McFarland's integrity and honesty. But this was solely based on Stefenoni's "women's intuition."
8 **Lapcevic Decl.**, ¶ 2; **Exh. I**, p. 172:2-7.

9 F. The Publication and Re-publication of Luttrell's February 7, 2012 Letter.

10 On or about February 7, 2012, after receiving and reviewing the report from the Executive
11 Committee, clearing McFarland on all charges, Luttrell nevertheless drafted and sent a letter to
12 McFarland and the members of the Executive Committee. Relying on the baseless and unauthorized
13 "minority" report, Luttrell's letter repeatedly disparaged and questioned McFarland's honesty,
14 integrity, and ability to lead the CSG. **McFarland Decl.**, ¶ 9; **Exh. H.**

15 The private letter was republished by Baker via email to another Grange member, as well as
16 republished to numerous other CSG members. **Lapcevic Decl.**, ¶5, **Exh. L.**

17 Due to the personal and confidential nature of the letter, the Executive Committee ordered an
18 investigation into the distribution of the letter. **Bunker Decl.** ¶3. During the course of the
19 investigation, Stefenoni admitted during her interview, that the letter was confidential, and related to a
20 confidential personnel matter. **Bunker Decl.**, ¶ 3; **Exh. F.**

21 Thereafter, based on the baseless "women's intuition" allegations contained in the minority
22 report, Luttrell suspended McFarland, suspended the charter of the CSG for not enforcing the
23 suspension of McFarland and permitted Stefenoni to reap the benefits of her character assassination by
24 being promoted to acting Master. The National Grange also filed the present action against the CSG
25 and McFarland in order to remove him from his employment.

26 In response, McFarland filed his original cross-complaint and now this FACC against the
27 National Grange, Luttrell, Baker, and Stefenoni for: (1) defamation; (2) public disclosure of private
28 facts; (3) intrusion; (4) intentional interference with contractual relations; (5) intentional interference

1 with prospective business relations; and, (6) infliction of emotional distress. See RJN No. 1.

2 III. LEGAL ANALYSIS AND ARGUMENT

3 A. The Standard of Review for the First Prong of the Anti-SLAPP Analysis

4 In evaluating an anti-SLAPP motion, the trial court first determines whether the defendant has
5 made a threshold showing that the challenged cause of action arises from a protected activity. Equilon
6 Enterprises v. Consumer Cause Inc. (2002) 29 Cal.4th 53, 67; Coretronic Corp. v. Cozen
7 O'Conner (2011) 192 Cal.App.4th 1381, 1387. The burden is satisfied by demonstrating that the
8 conduct underlying the plaintiff's claim fits into a category of protected activity set forth in section
9 425.16(e)(1)-(4). Navellier v. Sletten (2002) 29 Cal.4th 82, 88.

10 The California Supreme Court has explained that "[t]he statutory phrase 'cause of action ...
11 arising from' means simply that the defendant's act underlying the plaintiff's cause of action must
12 itself have been an act in furtherance of the right of petition or free speech. City of Cotati v.
13 Cashman (2002) 29 Cal.4th 69, 78 (emphasis added). The critical point is whether the plaintiff's
14 cause of action itself was based on an act in furtherance of the defendant's right of petition or free
15 speech. Navellier, supra, 29 Cal.4th at 89. To determine whether the principal thrust or gravamen of
16 the causes of action is protected petitioning activity, one looks to the pleadings and supporting and
17 opposing affidavits stating the acts upon which the liability or defense is based. Code Civ. Proc. §
18 425.16(b); Navellier, supra, 29 Cal.4th at 88.

19 Baker and Stefenoni's motion fails to satisfy the first prong of the anti-SLAPP analysis.

20 B. This Motion Fails To Satisfy The First Prong Of The Anti-SLAPP Analysis Because 21 It Does Not Arise From A Protected Activity.

22 An act in furtherance of a person's right to petition or free speech under the United States or
23 California Constitution in connection with a public issue includes:

24 ... (3) any written or oral statement or writing made in a place open to
25 the public or a public forum in connection with an issue of public
26 interest, or (4) any other conduct in furtherance of the exercise of the
constitutional right of petition or the constitutional right of free speech in
connection with a public issue or an issue of public interest.

27 Cal. Civil Code §425.16(e)(3)-(4) (emphasis added). In order for the allegations within the FACC to
28 fall within the purview of §425.16(e)(3) and/or (4), Cross-Defendants have the burden to demonstrate

1 that the speech of which McFarland complains falls within one of these two categories. Olaes,
2 *supra*, 135 Cal.App.4th at 1505.

3 The instant Special Motion to Strike contends that the principal thrust of the FACC is to curtail
4 Baker and Stefenoni's speech at the Grange Convention. They contend the speech at issue was made in
5 a public forum in connection with an issue of public interest, or in connection with a public issue
6 affecting the governance of the California State Grange. These assertions are patently false.

7 As set forth in detail below, the FACC complains of Baker's and Stefenoni's actions in relation
8 to the publication of false statements about McFarland's actions in his workplace and demean his
9 honesty and his professional compliance. The disparaging communications published by Baker and
10 Stefenoni at issue here were neither made on the floor of the CSG Annual Convention, nor were they
11 made in connection with a "public issue". (McFarland Decl., ¶ 14; Luvaas Decl., ¶ 15; Bunker
12 Decl., ¶ 6; RJN No. 1, FACC, ¶¶ 11-21.)

13 **C. The Principal Thrust Or Gravamen Of This Lawsuit Is Not In Furtherance Of A**
14 **Protected Activity; Thus, This Is Not A SLAPP-able Suit.**

15 In determining whether the initial "arising from" requirement has been met, the court considers
16 "the pleadings, and supporting and opposing affidavits stating the facts [on] which the liability or
17 defense is based." Martinez v. Metabolife International, Inc. (2003) 113 Cal.App.4th 181, 186. The
18 "principal thrust" is first assessed by identifying the allegedly wrongful and injury-producing conduct
19 that provides the foundation for the claim. Baharian, *supra*, 189 Cal.App.4th at 272. In the anti-
20 SLAPP context, the critical consideration is whether the cause of action is based on the defendant's
21 free speech. *Ibid*.

22 Baker and Stefenoni cannot unilaterally transform the factual basis of the FACC in order to
23 take advantage of the anti-SLAPP statute simply because the FACC contains a reference to speech or
24 the "seating of delegates" at the 2011 CSG Convention. See Martinez, *supra*, 113 Cal.App.4th at 188.
25 The fact that protected activity may lurk behind wrongful conduct may explain the rift between the
26 parties – but it does not transform tortious claims into a SLAPPable conduct. In re Episcopal Church
27 Cases, (2009) 45 Cal.4th 467, 477.

28 Curtailing Baker and Stefenoni's protected speech at the Grange convention is not the thrust or

1 gravamen of the claims asserted by McFarland in the FACC. The FACC never alleges, nor even
2 mentions, that McFarland's claims against Baker and Stefenoni arise out of their conduct,
3 communications, or behavior on the floor of the 2011 CSG Convention. See RJN No. 1; McFarland
4 Decl. ¶12. Therefore, their argument fails.

5 1. **The Claims Against Baker And Stefenoni Do Not Arise Out Of Any Behavior,**
6 **Conduct, Or Communications From The Floor Of The 2011 CSG Convention.**

7 The allegations set forth in the FACC are not based on any communications by Baker and
8 Stefenoni made about McFarland at the 2011 Annual Convention. (McFarland Decl., ¶ 14; Luvaas
9 Decl., ¶ 15; Bunker Decl., ¶ 6; Exh. M.) A cursory reading of the FACC clearly shows, McFarland's
10 causes of action are based on the republication of false allegations made by Stefenoni in (1) her
11 October 5, 2011 letter, (2) the "minority report", as well as (3) Baker's deliberate republication of
12 Luttrell's February 7, 2011 letter which contained baseless false statements regarding McFarland's
13 actions as Master of the CSG. (See RJN No. 1. See also McFarland Decl. ¶¶9-12; Exh. H.) A
14 review of the Journal of the 2011 Grange Convention, which contains a record of the convention,
15 shows that neither Baker nor Stefenoni made any comments regarding the investigation on the floor of
16 the 2011 Grange Convention, nor was the investigation ever discussed on the floor of the Convention.
17 (McFarland Decl. ¶12; Luvaas Decl. ¶15; Bunker Decl. ¶6; Exh. N.)

18 All of these communications were a product of the Executive Committee's investigation, at the
19 behest of Luttrell, which arose out of Luttrell's October 10, 2011 letter. (Luvaas Decl. ¶2; Exh. A.)¹
20 The purported facts contained in Baker and Stefenoni's self-serving declarations, that they made
21 statements on the floor of the convention, may somehow explain a rift between Baker, Stefenoni, and
22 McFarland; however, the declaration cannot transform the basis for McFarland's claims into a
23 "SLAPPable" lawsuit. See In re Episcopal Church Cases, *supra*, 45 Cal.4th at 477.² Because the

24
25 ¹ "That a cause of action arguably may have been 'triggered' by protected activity does not entail that it is one arising from
26 such. In the anti-SLAPP context, the critical consideration is whether the cause of action is *based* on the defendant's
protected free speech or petitioning activity." In re Episcopal Church Cases, *supra*, 45 Cal.4th at 477.

27 ² All of the actions on which McFarland bases his claims against Baker and Stefenoni occurred in private meetings prior to
28 the 2011 CSG Convention or in private meetings after the 2011 CSG Convention. (McFarland Decl. ¶14.)

1 communications by Baker and Stefenoni at issue in this lawsuit did not occur on the floor of the
2 Convention, they are not subject to the provisions of Code of Civil Procedure § 425.16, and this
3 motion is moot.

4 **2. The Claims In The FACC Arise Out Of A Private Workplace Investigation.**

5 A private workplace investigation does not fall within the ambit of the anti-SLAPP statute.
6 Oales, *supra*, 135 Cal.App.4th at 1509. Rather than arising out of some abstract debate over the
7 governance of the CSG, all of McFarland's claims arise out of baseless statements impugning his
8 reputation for competence and honesty (slander and defamation *per se*) being made by Stefenoni and
9 Luttrell, and being republished by Baker in the course and scope of what should have been a
10 confidential workplace investigation. (RJN No. 1, ¶¶ 11-16; McFarland Decl., ¶ 14.) Therefore, the
11 "principal thrust" or "gravamen" of McFarland's FACC is the publication of baseless allegations about
12 his integrity and honesty which arose out of this confidential workplace investigation.

13 Further, all allegations in the FACC against Baker and Stefenoni are based solely on their
14 actions prior to, or after, the 2011 CSG Convention. (McFarland Decl., ¶12; RJN No. 1, ¶¶ 11-16.)
15 Even the allegation concerning McFarland's role in attempting to allow improperly credentialed
16 alternate delegates to affiliate with other subordinate Granges did not occur during the Convention, but
17 rather in a time period leading up to the Convention. (*Id.* at ¶4, Exh. A; Exh. J.)

18 Baker and Stefenoni have failed to meet their burden of establishing that McFarland's
19 allegations arose from conduct in furtherance of the exercise of the constitutional right of free speech,
20 or in connection with a public issue or an issue of the public interest (425.16(e)(3) and (4)), and thus,
21 their special motion must be denied.

22 **D. The Behavior, Conduct, And Communications By Cross-Defendants, As Alleged In The**
23 **FACC, Did Not Take Place In A Public Forum.**

24 Baker & Stefenoni attempt to invoke the provisions of Code of Civil Procedure § 425.16(e)(3)
25 by erroneously claiming that the 2011 CSG Annual Convention was a "public forum." Even if true,
26 this argument also fails.

27 A public forum is a place open to the general public for purposes of assembly, communicating
28 thoughts between citizens, and discussing public questions. Weil & Brown, *supra*, at 7(II)-25, ¶7:749

1 [citing Kurwa v. Harrington, Foxx, Dubrow & Canter, LLP (2007) 146 Cal.App.4th 841, 846.]
2 Courts generally construe “public forum” broadly to include settings and contexts beyond those
3 protected by the First Amendment. Weil & Brown, *supra*, at 7(II)-25, ¶7:749 [citing Seelig v. Infinity
4 Broadcasting Corporation (2002) 97 Cal.App.4th 798, 807.] But despite this broad construction, no
5 incidental protected speech connected to the investigation was made in a public forum. Therefore, the
6 complained of activities did not take place in a public forum. *Id.*

7 As previously stated, the FACC does not claim that any of Baker or Stefenoni’s wrongful
8 actions took place at the 2011 CSG Convention. (See RJN No. 1, pp. 3-6; McFarland Decl. ¶12.)

9 However, Baker and Stefenoni extensively argue that the holding of Damon v. Ocean Hills
10 Journalism Club, (2000) 85 Cal.App.4th 468 should apply in support of their proposition that the
11 2011 CSG Convention was a public forum. (See Cross-Defendants’ Special Motion, p.11:6-16.)
12 However, Damon is clearly distinguishable.

13 In Damon, the court found that plaintiff’s defamation claim could be stricken because the
14 defamatory statements were actually made at public board meetings of a homeowner’s association, and
15 in its generally distributed newsletter. Damon, supra, 85 Cal.App.4th at 474. In Damon, the board
16 meetings were televised, open to all interested parties, and functioned similar to a governmental body.
17 *Ibid.* Further, the court found that because a homeowner’s association’s board of directors’ had broad
18 powers, the number of individuals potentially affected by the board’s actions, and that the legislature
19 mandated that homeowner’s association hold open meetings to allow members to speak publically, that
20 such meetings were public forums. *Id.* at 475.

21 Grange Conventions are entirely distinguishable from the homeowner’s association meetings in
22 Damon. Grange Conventions are not open to the general public or even the non-delegate members of
23 the State Grange. Individual Grange members are not permitted to attend or speak publically at the
24 meeting. (McFarland Decl. ¶14.) Rather, each year, the Master of each subordinate Grange and their
25 spouse may attend the annual conventions as delegates of their respective Grange hall. The delegates
26 can vote for Grange officers, on Grange policy, and discuss Grange issues. *Ibid.* These conventions
27 have never been televised or broadcast over radio. *Id.* The 2011 CSG Convention was not a “public
28 forum,” and the FACC is not subject to Cal. Code of Civil Procedure, section 425.16(e)(3).

1 **E. The Communications At Issue In The FACC Do Not Relate To Or Arise Out Of A Public**
2 **Issue Or An Issue That Is In The Interest Of The Public.**

3 “The focus of the anti-SLAPP statute must be on the specific nature of the speech rather than
4 on generalities that might be abstracted from it.” World Financial Group, Inc. v. HBW Ins. &
5 Financial Services (2009) 172 Cal.App.4th 1561, 1572. In order to satisfy the public issue/issue of
6 public interest requirement under circumstances where the issue is of interest to a limited portion of the
7 public, such as a private organization, the constitutionally protected speech must – at a minimum –
8 occur in the context of an ongoing controversy, dispute, or discussion, such that it warrants protection
9 by and from the statute and embodies the public policy of encouraging participation in matters of public
10 significance. *Id.* at 1572-1573.

11 While the statute does not provide a definition for “public interest,” there must be some
12 attribute of a public, rather than merely private, interest involved. Weinburg v. Feisel, *supra*, 110
13 Cal.App.4th at 1132. The court in Weinburg provided the following guiding principles: (1) “public
14 interest” does not equate with mere curiosity; (2) a matter of public interest should be something of
15 concern to a substantial number of people; (3) there should be some degree of closeness between the
16 challenged statements and the asserted public interest; and, (4) the focus of the speaker’s conduct
17 should be the public interest rather than a mere effort “to gather ammunition for another round of
18 [private] controversy. (Emphasis added.) *Id.* at 1132-1133.

19 Baker and Stefenoni’s motion does not explain what public interest is involved in the
20 confidential investigation conducted by the CSG’s Executive Committee into McFarland’s actions as
21 an employee of the State Grange. It appears Baker and Stefenoni argue that the public issue involved
22 the “governance of the California Grange, and its mission relating to matters of legislation and general
23 public policy.” (See Cross-Defendants’ Special Motion, pp. 11:27-12:1; emphasis in original.) But,
24 in reality, the behavior, conduct, and communications made by Baker and Stefenoni as alleged in the
25 FACC had absolutely nothing to do with any legislation or general public policy on the agenda at the
26 2011 Annual Convention. See In re Episcopal Church Cases, *supra*, 45 Cal.4th at 477.

27 The private investigation into McFarland had nothing to do with legislation or general public
28 policy; rather, it had everything to do with: (1) whether or not McFarland personally changed dates on

1 charter applications; (2) whether or not McFarland intentionally encouraged alternate delegates to
2 improperly affiliate with other subordinate Granges; and, (3) whether or not McFarland engaged in
3 conduct within the CSG office which amounted to harassment, bullying, and the intimidation of
4 employees. (McFarland Decl., ¶¶ 4, 14; Luvaas Decl., ¶2; Exh. A.) All of the foregoing issues were
5 fully investigated and the authorized Executive Committee found no wrongdoing or violation of
6 Grange law by McFarland. (Luvaas Decl. ¶¶6,8,10; Exhs. A, B, and C.)

7 In Weinberg, plaintiff and defendant were members of the National Token Collectors'
8 Association which had approximately 700 members. Weinburg, supra, 110 Cal.App.4th at 1128.
9 Defendant began a campaign to oust plaintiff from the association by running advertisements which
10 implied that the plaintiff was a crook and a thief. *Id.* at 1128-1129. In launching such a campaign,
11 defendant's admitted tactic was to "get into plaintiff's head" and keep him guessing as to whether he
12 would be removed from the organization. *Ibid.* Plaintiff brought claims against the defendant for libel,
13 slander, and infliction of emotional distress. *Ibid.* In rejecting the defendant's argument that the
14 defendant's conduct was in the public interest, the court held:

15 *Defendant has failed to demonstrate that his dispute with plaintiff was*
16 *anything other than a private dispute between the parties.* The fact that
17 the defendant was able to vilify plaintiff in the eyes of at least some
18 people only establishes that he was at least partially successful in his
19 campaign of vilification; it does not establish that he was acting on a
20 matter of public interest.

21 Weinburg, supra, 110 Cal.App.4th at 1133 (emphasis added). This is precisely what Baker and
22 Stefenoni have done in the present matter.

23 Baker and Stefenoni have failed to demonstrate that their publication or republication of
24 baseless and defamatory statements were anything other than an attempt to have McFarland removed
25 from his position as State Master. McFarland's removal as State Master would of course have allowed
26 Stefenoni to ascend to the proverbial "throne" of Master as a result of her then current position as
27 Overseer. (McFarland Decl. ¶3.)

28 The fact that Baker and Stefenoni's actions in furtherance of the publication of Luttrell's
defamatory February 7, 2012 letter may have influenced some members of CSG does not establish that
they were acting in a matter of public interest. (Exh. L, p. 64:17-20.) Weinburg, supra, 110

1 Cal.App.4th at 1133. Instead, Baker and Stefenoni were acting in a self-interested, and self-serving
2 manner, in trying to remove McFarland in order for Stefenoni to succeed him as Master. (See e.g.
3 McFarland Decl. ¶4.)

4 Moreover, the drafting of (1) the October 5, 2011 letter, (2) the "minority report", and (3) the
5 republication of the February 7, 2012 letter which contained defamatory statements had nothing to do
6 with general public policy or legislation.

7 **F. The Standard Of Review For The Second-Prong of Anti-SLAPP Analysis.**

8 Once a defendant makes a prima facie showing that the lawsuit arises out of constitutionally
9 protected free speech or petition activity, then the burden shifts to the plaintiff to establish a
10 "probability" of prevailing on whatever claims are asserted against the defendant. See Code of Civil
11 Procedure §425.16(b); Premier Medical Management Systems, Inc. v. California Insurance
12 Guarantee Association (2006) 136 Cal.App.4th 464, 476. In order to meet its burden in opposing an
13 anti-SLAPP motion, a plaintiff need only establish that the claim has "minimal merit" to avoid being
14 stricken (Sycamore Ridge, supra, 157 Cal.App.4th at 1397), and like a summary judgment, the court
15 must accept as true all evidence and inferences in the light most favorable to the plaintiff. Soukup v.
16 Law Office of Herbert Hafif (2006) 39 Cal.4th 260, 291. A defendant's evidence is considered only
17 to the extent it defeats the plaintiff's showing as a matter of law. See Ross v. Kish (2006) 145
18 Cal.App.4th 188, 197; HMS Capital, Inc. v. Lawyers Title Co. (2004) 118 Cal.App.4th 204, 212.

19 Baker and Stefenoni's special motion to strike fails to even address the second prong of the
20 foregoing test.

21 **G. This Special Motion To Strike Must Be Denied Because It Fails To Satisfy The**
22 **Second Prong The Anti-SLAPP Analysis Because McFarland's FACC Is Legally**
23 **Sufficient And Is Supported By A *Prima Facie* Showing Of Facts To Sustain A**
24 **Favorable Judgment.**

25 Baker and Stefenoni argue that the action arises out of free speech and protected activity. They
26 fail, however, to submit any evidence to support, or even address, the second prong of the anti-SLAPP
27 analysis. The facts in the FACC, as well as evidentiary support submitted by McFarland clearly
28 demonstrate that the causes of action have been properly pled, and that a question of fact exists as to
the claims alleged by McFarland. Sycamore Ridge, supra, 157 Cal.App.4th at 1397.

1 Baker and Stefenoni's declarations not only fail to defeat McFarland's claims, but fail to even
2 contradict the facts set forth in the FACC and/or the declarations of McFarland, Luvaas and Bunker in
3 support of this opposition. Baker and Stefenoni's declarations, at best, only create a question of fact as
4 to the origin or the time and place of their defamatory and wrongful actions. While Baker and
5 Stefenoni allege such communications occurred during the 2011 CSG Convention; McFarland's
6 evidence contradicts such assertions. McFarland controls the allegations of his complaint. (McFarland
7 Decl. ¶12; Luvaas Decl. ¶15; Bunker Decl. ¶6; Exh. M.)

8 Baker's declaration states that she publically described the investigation by the Executive
9 Committee into McFarland's actions as Master on the floor of the convention. (See Baker Decl., ¶4.)
10 This is her only evidentiary basis for why her speech is protected. There is no support for this
11 statement in the record. Indeed, the record contradicts that Baker ever described the investigation on
12 the floor of the 2011 State Convention. (McFarland Decl. ¶12; Luvaas Decl. ¶15; Bunker Decl. ¶6;
13 Exh. M.)

14 Moreover, the actions alleged in the FACC are not alleged to have arisen out of any speeches
15 made on the floor of the 2011 CSG Convention or any legislative or general public policy matters
16 discussed at the Convention. (See RJN No. 1 ¶11-25.) To the contrary, McFarland's allegations
17 against Baker arise solely from her republication of the defamatory statements contained in the
18 confidential February 7, 2012 letter. (McFarland Decl. ¶12-13, Exh. M.) Members of CSG have
19 testified that they received the February 7, 2012 letter from Baker. (Exh. L.) Therefore, a question of
20 fact exists as to the basis for the claims against Baker; thus, Baker's special motion to strike must be
21 denied.

22 As to Stefenoni, McFarland's FACC does not allege that her speech on the convention floor
23 was the basis for the cause of action alleged against Stefenoni. (McFarland Decl. ¶11-12.) Further, the
24 allegation that Stefenoni spoke on the floor of 2011 CSG Convention is not reflected in the Journal
25 from the 2011 CSG Convention. (*Id.* at ¶13, Exh. M.) Rather, this suit is based on Stefenoni's
26 campaign to vilify McFarland and remove him from his duly elected office by writing and distributing
27 her October 5, 2011 letter, and by distributing the "minority report" written based solely upon her
28

1 "woman's intuition" (Exh. I p. 172:2-7). Further, such report contained knowingly false statements,
2 which were the basis for Luttrell's defamatory February 7, 2012 letter.

3 Finally, the declaration of Stefenoni is contradicted by the declarations of McFarland, Luvaas,
4 and Bunker and create a triable issue of fact as to what speech or communications took place on the
5 floor of the Grange Convention. Thus, Baker and Stefenoni have failed to satisfy the second prong of
6 the anti-SLAPP analysis. See e.g. Ross v. Kish, *supra*, 145 Cal.App.4th at 197. In the light most
7 favorable to them there is a triable issue of fact under prong 2. Daniels v. Robbins (2010) 182
8 Cal.App.4th 204, 217 (if Plaintiff demonstrates that its complaint is both legally sufficient and
9 supported by a sufficient prima facie showing of facts to sustain a favorable judgment then the SLAPP
10 motion must be denied).

11 Therefore, McFarland has alleged more than sufficient facts to demonstrate the requisite
12 "minimal merit" needed to prevail on his opposition to this anti-SLAPP claim.

13 IV. CONCLUSION

14 Based upon the foregoing, McFarland respectfully requests this Court deny Baker and
15 Stefenoni's frivolous special motion to strike.

16 Dated: October 16, 2013

17 ELLIS LAW GROUP, LLP

18 By 

19 William A. Lapcevic
20 Attorney for
21 DEFENDANT/CROSS COMPLAINANT ROBERT
22 MCFARLAND
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