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LEGAL PROCESS #6

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO

THE NATIONAL GRANGE OF THE  
ORDER OF PATRONS OF  
HUSBANDRY, a Washington, D.C.,  
nonprofit corporation,

Plaintiff,

vs.

THE CALIFORNIA STATE GRANGE,  
a California nonprofit corporation, and  
ROBERT McFARLAND, JOHN  
LUVAAS, GERALD CHERNOFF and  
DAMIAN PARR,

Defendants.

and related cross actions.

CASE NO. 34-2012-00130439

REPLY BRIEF OF CROSS  
DEFENDANTS MARTHA STEFENONI  
AND SHIRLEY BAKER IN SUPPORT OF  
SPECIAL MOTION TO STRIKE  
[ANTI-SLAPP, CCP §425.16]

RESERVATION NO.: 1877422

DATE: October 29, 2013

TIME: 2:00 p.m.

DEPT.: 53

JUDGE: Hon. David Brown

Complaint Filed: October 1, 2012

Trial Date: Not yet set

REPLY BRIEF IN SUPPORT OF SPECIAL  
MOTION TO STRIKE

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TABLE OF CONTENTS

I. The Facts and the Law Support The Motion to Strike ..... 1

II. McFarland Cannot Sustain His Burden of Proving  
the Probability He Will Prevail ..... 7

**TABLE OF AUTHORITIES**

**CALIFORNIA SUPREME COURT CASES**

*Shulman v. Group W Productions* (1998) 18 Cal 4<sup>th</sup> 200 ..... 10

**CALIFORNIA COURTS OF APPEAL CASES**

*Baharian-Mehr v. Smith* (2010) 189 Cal.App.4<sup>th</sup> 265 ..... 6

*Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4<sup>th</sup> 468 ..... 4

*Kinsey v. Macur* (1980) 107 Cal.App. 3d 265, 271 ..... 9

*Olaes v. Nationwide Mutual Ins. Co.*, (2006) 135 Cal. App. 4<sup>th</sup> 1501 ..... 5, 6

*Weinberg v. Feisel* (2003) 110 Cal.App.4<sup>th</sup> 1122 ..... 6

*World Financial Group, Inc. v. HBW Ins. & Financial Services, Inc.* (2009)  
172 Cal.App. 4<sup>th</sup> 1561 ..... 6

**CALIFORNIA STATUTES**

Civ. C. §44 ..... 7

Civ. C. §45 ..... 7

Civ. C. §46 ..... 7

Civ. C. §46(c)(3) ..... 7

Civ. C. §47 ..... 5

Civ. C. §47(c)(1) ..... 7

Civ. C. §47(c)(3) ..... 8

Code Civ. Proc. Section 425.16 ..... 5

Code Civ. Proc. Section 425.16(e)(3) ..... 4

Code Civ. Proc. Section 425.16(e)(4) ..... 4

Corporations Code §7152 ..... 6

Corporations Code §7153(c)(5) ..... 6

**TREATISES AND OTHER AUTHORITIES**

CACI 1600 ..... 11

CACI 1620 ..... 11

1	5 Witkin, Summary of California Law, 10 <sup>th</sup> Ed. Torts, §529 .....	7
2	5 Witkin, Summary of California Law, 10 <sup>th</sup> Ed. Torts, §556 .....	7
3	5 Witkin, Summary of California Law, 10 <sup>th</sup> Ed. Torts, §591 .....	7
4	5 Witkin, Summary of California Law, 10 <sup>th</sup> Ed. Torts, §593 .....	8
5	5 Witkin, Summary of California Law, 10 <sup>th</sup> Ed. Torts, §600 .....	8
6	5 Witkin, Summary of California Law, 10 <sup>th</sup> Ed. Torts, §653 .....	8
7	5 Witkin, Summary of California Law, 10 <sup>th</sup> Ed. Torts, §654 .....	8
8	5 Witkin, Summary of California Law, 10 <sup>th</sup> Ed. Torts, §658 .....	9
9	5 Witkin, Summary of California Law, 10 <sup>th</sup> Ed. Torts, §659 .....	10
10	5 Witkin, Summary of California Law, 10 <sup>th</sup> Ed. Torts, §660 .....	9
11	5 Witkin, Summary of California Law, 10 <sup>th</sup> Ed. Torts, §664 .....	9
12	5 Witkin, Summary of California Law, 10 <sup>th</sup> Ed. Torts, §665 .....	9
13	5 Witkin, Summary of California Law, 10 <sup>th</sup> Ed. Torts, §666 .....	9
14	5 Witkin, Summary of California Law, 10 <sup>th</sup> Ed. Torts, §686 .....	10
15	5 Witkin, Summary of California Law, 10 <sup>th</sup> Ed. Torts, §687 .....	10
16	5 Witkin, Summary of California Law, 10 <sup>th</sup> Ed. Torts, §731 .....	10
17	5 Witkin, Summary of California Law, 10 <sup>th</sup> Ed. Torts, §738 .....	10
18	5 Witkin, Summary of California Law, 10 <sup>th</sup> Ed. Torts, §742 .....	11
19	5 Witkin, Summary of California Law, 10 <sup>th</sup> Ed. Torts, §743 .....	11
20	5 Witkin, Summary of California Law, 10 <sup>th</sup> Ed. Torts, §745 .....	11
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1 I. The Facts and the Law Support The Motion to Strike

2  
3 The cross complainant McFarland's technique in opposing this special motion to  
4 strike is to mischaracterize the legal basis for the motion, and the facts that underlie it.

5  
6 But, the unfiltered record, as gleaned from the sources and not the characterization  
7 of those sources, clearly establishes that substantial and credible concerns arose regarding  
8 the legitimacy of the chartering of new subchapters of the California State Grange, as well  
9 as the seating of alternative delegates at the annual convention. These concerns were  
10 voiced not only by the moving parties here, but by others as well. *Whether by the "majority"*  
11 *report or the minority report, all agree, the charter applications were misdated, and further, the*  
12 *qualifications of delegates to the convention were improperly issued in some instances.* Says the  
13 majority: "[We] discovered serious procedural and protocol problems and errors in  
14 processing charters within the office. ... [T]he absence of clear procedures, protocol and  
15 education caused or contributed to misunderstandings, confusion, delays and errors in  
16 determining the qualifications of some delegates and in processing their credential  
17 applications." [Executive Committee's Final Report, Exhibit "D" BM 000096-97]<sup>1</sup>

18  
19 McFarland's opposition ignores the significance of these concerns over chartering of  
20 subordinate granges and delegate credentials. The attendance at the Grange convention,  
21 the governing body of the Grange, determines the right to vote on the host of issues and  
22 concerns of the convention, including election of officers, and organizational stances on a  
23 host of public policy initiatives. [See opening brief, p. 5:15, et seq]. Moreover, the sheer  
24 number of people involved in the Grange matters (7,500 California members, among  
25 300,000 national members) speaks mightily to the importance of the integrity of the

26  
27 <sup>1</sup>All references are to the Index of Exhibits in Support of Cross Complainant Robert  
28 McFarland's Opposition, unless otherwise noted.

1 election processes. Integrity in governance means that the voice heard for the interests of  
2 grangers is that of its members, and not a rogue administration. Given that the California  
3 Grange is a factor in the political debate in the State legislature underscores the  
4 importance of the need for proper process in the election and oversight of leadership. [See  
5 Exhibits 3 to Opening Brief, CSG Legislative Handbook]  
6

7         The significance of proper chartering and delegate credentialing were not lost on  
8 Martha Stefenoni when she voiced her concerns to Ed Luttrell, the head of the National  
9 Grange, in a careful letter written at the threshold of the California convention in October  
10 2011. [Exhibit J]. That exhibit speaks of her concerns for the integrity of organization, and  
11 not her private interests. Moreover, contrary to the characterization by McFarland, the  
12 letter written by Stefenoni did not single out McFarland, or even claim itself to be a  
13 conclusion of an investigation into the facts. Instead, Stefenoni asked for an investigation.  
14 [Exhibit J], and expressed herself carefully as voicing questions not conclusions. She talks  
15 of the "*possibility* of impropriety in the charter applications . . . *Ostensibly*, there also appear  
16 to be irregularities on the individual member applications for Petaluma Grange." [emphasis  
17 added, Exhibit J, bates BM - 00308]  
18

19         This governance controversy concerning the qualifications for and the certification  
20 of delegates to the annual convention did indeed reach the 2011 convention floor, as well as  
21 the fact the Executive Committee was investigating Luttrell's charges, contrary to the  
22 misstatement in the opposition.  
23

24         The Official Journal of the 2011 Annual Convention (Exhibit M) states on page 13  
25 that there was a motion relative to the seating of delegates: "that all Grangers with  
26 credentials who have applied for delegate status . . . be accepted by delegate body as such."  
27 Moreover, the Website for the California Grange contains a press release with the  
28

1 following statement concerning the investigation of Luttrell's charges, and the seating of  
2 delegates at the 2011 annual convention:

3  
4 "The CSG EC began investigating Luttrell's accusations and the intensity is  
5 felt throughout the Convention . . . up to 22 delegates are disenfranchised or  
6 delayed in obtaining their voting rights . . . Delegates are outraged and a  
7 motion from the floor to seat all credentialed delegates is made. . . the  
8 motion is adopted nearly unanimously with cheers and applause. . .  
9 McFarland . . . makes a statement that the motion adopted the previous day  
10 has been challenged and that review of delegate credentials will continue."<sup>2</sup>  
11 (emphasis added)

12  
13 Ed Luttrell of the National Grange charged the Executive Committee with the role  
14 of investigating the issues. As mentioned above, the investigation that ensued did identify  
15 improprieties *by all accounts*. However, McFarland cast the deciding vote in support of the  
16 majority report, leaving some questions unresolved. The Minority Report expressed the  
17 feeling that McFarland's role in the improprieties was not fully fleshed out. Again, the  
18 concerns were expressed respectfully, and in pursuit of an investigation. In the Minority  
19 Report, it states that the 3 minority members of the 4-3 vote with McFarland himself  
20 casting the 4th vote, did not concur with the majority report. The report noted with respect  
21 to the determination that dates had been changed:

22  
23 "The question of why the Master [McFarland] allowed the charter

24  
25 <sup>2</sup>Attached to the Request for Judicial Notice in Support of Cross-Defendants Martha  
26 Stefenoni and Shirley Baker's Reply Brief as Exhibit 5, is a true and correct copy of a  
27 posting on the California State Grange website, dated October 11, 2013 (after the filing of  
28 this motion to strike). This is a blatant admission of the "public interest" within the  
California State Grange and the public at large regarding the governance issues at hand,  
and the public debate that has followed. The court is asked to take judicial notice of  
Exhibit 5.

1 applications to be sent to National Grange without verifying that all dates  
2 were correct has yet to be fully answered." [Exhibit E, BM000304]  
3

4 The Minority Report went on to explain the process that the Executive Committee  
5 did at the annual convention to verify the credentials of some of the delegates when their  
6 work was interrupted by the motion on the floor to seat all delegates which was passed.  
7 After the convention attempts to clear up credential questions continued, but the Report  
8 stated:

9 "Although we tried, to the best of our abilities, we were not able to  
10 completely verify the questionable credentials." [Exhibit E, BM000305]  
11

12 The balance of the Minority Report went into detail concerning the investigation  
13 into the operations and management of the office, criticizing Mr. McFarland for entirely  
14 blaming his staff for the miscues, and concluding: "We submit this minority report for your  
15 consideration as you determine if the investigation you charged the EC to conduct on  
16 October 11, 2011 has been completed to your satisfaction." [Exhibit E, BM000307]  
17

18 Despite the interest in a fair and complete investigation, with the goal of fair and  
19 proper governance, McFarland sues Stefenoni and Baker over these communications. Yet,  
20 their legal import is clear:  
21

- 22 1. This is a "slappable" cross complaint, implicating the public forum and public  
23 interest prong of Section 425.16(e)(3), and/or the public issues or issues of public  
24 interest prong of Section 425.16(e)(4). (emphasis added)
- 25 2. The opposition tries to ignore the public issues or issues of public interest, ignoring  
26 the controlling precedent of the *Damon* case [85 Cal.App.4th 468] and the other  
27 authorities cited in our opening Points and Authorities.  
28



- 1 3. The opposition cites cases that have no bearing on the facts of this case.
- 2 4. The cross complainant's offer of proof as to the merits of his claim fails to pass
- 3 muster.
- 4 a. The wrongful acts alleged in the complaint arise out of the three documents
- 5 discussed above, Stefenoni's October 5<sup>th</sup> letter, the Minority report January
- 6 25, 2012 and Luttrell's letter February 7, 2012.
- 7 b. The statements of fact in Stefenoni's letter, in the Minority Report, and in
- 8 Luttrell's letter, are true, or are statements of opinion.
- 9 c. The disbursement of the Luttrell letter doesn't raise a point of concern, as it's
- 10 a nonevent. Indeed, the CSG has published this debate all over its website.
- 11 d. The opposition virtually ignores the obvious application of the qualified
- 12 privilege of Civ. C. Section 47 et. seq, and its demands, including proof of
- 13 malice.
- 14 e. The opposition ignores that others were involved in the public debate of
- 15 these issues, including (whistleblower Amy Self) and cross-defendant Luttrell.
- 16 5, Ultimately, this debate is carrying on between the National Grange and the
- 17 California State Grange, and is playing out in the main action of this case.
- 18

19 To subject Stefenoni and Baker to this lawsuit runs afoul of the very principles upon

20 which Section 425.16 were founded.

21

22 Section 425.16 codifies the Legislature's desire to encourage continued

23 participation in matters of public significance, a participation that should not

24 be chilled through abuse of the judicial process. To effectuate this goal, the

25 Legislature instructs that section 425.16 "shall be construed broadly."

26 (internal citations omitted) *Olaes v. Nationwide Mutual Ins. Co.*, (2006) 135

27 Cal. App. 4th 1501, 1506

28

1 In his opposition, McFarland does not dispute: (1) that governance of the California  
2 Grange takes place at the annual convention in accordance with California Law  
3 (Corporations Code §§ 7152, 7153(c)(5) and its bylaws; (2) that there is a legal and  
4 organizational connection between the National Grange and its 300,000 members, and the  
5 California Grange and its 7,500 members; and (3) that he can be suspended for failure or  
6 refusal to obey the laws of the National Grange.

7  
8 In his opposition McFarland does not dispute: (1) that the purposes of the  
9 California Grange and the National Grange are to promote agriculture, and (2) that at the  
10 California Grange annual convention the delegates voted on resolutions relating to  
11 legislation and public policy with particular reference to agriculture and matters of concern  
12 to rural America.

13  
14 The cases cited by the opposition in support of the notion that this case involved  
15 strictly private matters are clearly distinguishable. *Baharian-Mehr v. Smith* (2010) 189  
16 Cal.App.4th 265 involved a private business dispute between partners over alleged  
17 accounting irregularities. *Olaes v. Nationwide Mutual Ins. Co.* (2006) 135 Cal. App. 4<sup>th</sup> 1501  
18 determined that a company's sexual harassment policy did not transform the private  
19 employer's policy into an entity conducting "official" proceedings. *World Financial Group,*  
20 *Inc. v. HBW Ins. & Financial Services, Inc.* (2009) 172 Cal.App. 4<sup>th</sup> 1561 determined that a  
21 case involving an employee raiding confidential information did not involve freedom of  
22 speech. *Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122 determined that a communication  
23 by a token collector to a small group of collectors about another collector who had not be  
24 charged with a crime, was a private matter.

25  
26 The statements of Stefenoni and Baker were there exercise of their constitutional  
27 rights of free speech directed to the public interest and public issues surrounding the  
28

1 governance of the California Grange, its 7,500 members, and its relationship with the  
2 National Grange and its 300,000 members.

3  
4 **II. McFarland Cannot Sustain His Burden of Proving the Probability He Will Prevail**

5  
6 McFarland has the burden of showing that there is a probability that he will prevail  
7 on his claims. This section of the Reply Brief shall outline what the legal theories are, why  
8 not legally sustainable, or subject to defenses.

9  
10 Defamation

11 Defamation is an invasion of the interest in reputation by libel or slander. (Civ. C.  
12 §44) The tort involves (a) a publication that is (b) false, (c) defamatory, and (d)  
13 unprivileged, and that has a natural tendency to injure or that causes special damages. (Civ.  
14 C. §§45, 46) [5 Witkin, Summary of California Law, 10<sup>th</sup> Ed. Torts, §529]

15  
16 Truth is a complete defense regardless of bad faith or malicious purpose. [Witkin,  
17 supra, §556] Truth and Privilege are distinct defenses. If privileged, the publication may be  
18 false and the words defamatory per se. [Witkin, supra, §556]

19  
20 A "Qualified Privilege" exists for a communication made without malice, to a person  
21 interested therein in any of the following circumstances:

- 22  
23 (1) Common interest: by one who is also interested (Civ. C. §47(c)(1))  
24 (3) Request for information: by one who is requested by the person  
25 interested to give the information (Civ. C. §46(c)(3))[Witkin, supra,  
26 §591]

1 Malice in defamation cases means "actual" or "express" malice, hatred, ill will, and  
2 not the fictional malice implied by law from the intentional doing of a wrongful act without  
3 just cause. [Witkin, supra, §593] Once the defendant establishes that the statement was  
4 made on a privileged occasion, the burden then shifts to the plaintiff to establish that the  
5 statement was made with malice. [Witkin, supra, §600]

6  
7 As discussed above, the three challenged documents are all factually true. The  
8 Stefenoni letter and the Luttrell letter are protected by the common interest privilege as  
9 they were communications with persons on matters of common interest. The Minority  
10 Report is protected by the privilege contained in subsection (3) of Civ.C 47(c). This report  
11 was a result of the request for an investigation made to the Executive Committee by  
12 Luttrell on October 11, 2011.

13  
14 McFarland makes no effort to show a probability of success as to the remaining  
15 causes of action. We address those now to show that there is no chance of McFarland  
16 prevailing, not alone a probability.

17  
18 Invasion of Privacy

19 The second cause of action (Public Disclosure of Private Facts) and the third cause  
20 of action (Intrusion) are subsets of the tort of Invasion of Privacy.

21  
22 Invasion of privacy differs from defamation in that it concerns one's peace of mind  
23 and not their reputation. [Witkin, supra, §653]. A right of privacy is violated only by  
24 publicity or public disclosure of a communication to the public in general, or to a large  
25 number of persons' to be distinguished from an individual or only a few persons. [Witkin,  
26 supra, §654]

1 Neither Stefenoni's letter of October 5, 2011, or the Minority report of January 25,  
2 2012, involved a public disclosure in general, or to a large number of persons. Baker's  
3 republication of Luttrell's February 7, 2012 letter was to one person, Jay Hartz.

4  
5 Public Disclosure of Private Facts:

6 There is a common law theory of liability in which the interest to be protected is  
7 individual freedom from wrongful publicizing of private affairs and activities that are  
8 outside the realm of legitimate public concern. [Witkin, supra, §664 citing *Kinsey v. Macur*  
9 (1980) 107 Cal.App. 3d 265, 271]

10  
11 Much of the decisional law in this area has involved publications in which the  
12 question raised was whether the plaintiff had proved that the disclosure lacked  
13 newsworthiness. [Witkin, supra, §665] There are numerous statutes relating to the  
14 improper disclosure of personal information, none of which are applicable to the facts of  
15 this case. [Witkin, supra, §666]

16  
17 The communications in issue concerned important public activities of the National  
18 and California Granges, not private affairs or activities of McFarland.

19  
20 Intrusion into Private Affairs:

21 There is a common law theory of liability where one intentionally intrudes,  
22 physically or otherwise, upon the solitude or seclusion of another or his private affairs, if  
23 the intrusion is highly offensive to a reasonable person. Examples are shadowing in an  
24 objectionable manner, and eavesdropping. [Witkin, supra, §658] There are statutory  
25 authority, none of which are factually applicable here. [Witkin, supra, §660, et seq.]

26  
27 To prove actionable intrusion, the plaintiff must show that the defendant penetrated  
28

1 some zone of physical or sensory privacy surrounding, or obtained unwanted access to data  
2 about the plaintiff. The tort is provable only if the plaintiff had an objectively reasonable  
3 expectation of seclusion or solitude in the place, conversation, or data source. [Witkin,  
4 supra, 659; *Shulman v. Group W Productions* (1998) 18 Cal 4<sup>th</sup> 200, 232]

5  
6 There isn't a scintilla of evidence supporting this theory.

7  
8 Moreover, the defense of privilege in invasion of privacy cases are the same as those  
9 in defamation. [Witkin, supra, §686] The defense of public interest is also applicable.  
10 Those whose lives are a matter of public interest, cannot complain of the normally  
11 expectable publicity that results. [Witkin, supra, §687]

12  
13 Intentional Interference With Contractual Relations

14 The elements of the cause of action are: (a) a valid contract between plaintiff and a  
15 third party; (b) defendant's intentional acts designed to breach or disruption of the  
16 contractual relationship, and (c) resulting damage. Unlike interference with prospective  
17 economic advantage, the defendant's conduct need not be wrongful apart from the  
18 interference itself. [Witkin, supra, §731] The plaintiff must prove actual disruption of the  
19 contractual relationship and resulting damage. [Witkin, supra, §738]

20  
21 McFarland cannot demonstrate any disruption of any contractual relationship and  
22 resulting damage. Assuming, arguendo, as the elected Master/President of the California  
23 Grange, this gave rise to a contractual relationship with the California Grange, it has not  
24 been disrupted.

25  
26 Interference with Prospective Economic Damage:

27 The elements of this cause of action are: (a) An economic relationship between the  
28

1 plaintiff and some third party, with the probability of future economic benefit; (b) the  
2 defendant's knowledge of the relationship; (c) intentional acts by the defendant designed to  
3 disrupt the relationship; (d) actual disruption of the relationship; (e) economic harm  
4 caused by the acts of the defendant; (f) conduct that was wrongful by some legal measure  
5 than the actual interference itself. [Witkin, supra, §742]

6  
7 In both of the above interference claims, the plaintiff must prove that the defendant  
8 intended to cause the result. [Witkin, supra, §743] The plaintiff must prove that except for  
9 the tortious interference the contract or profit would have been obtained. [Witkin, supra,  
10 §745]

11  
12 Here again, McFarland cannot show any of the elements of this cause of action.

13  
14 Infliction of Emotional Distress

15 Intentional Infliction of Emotional distress requires a defendant's conduct be  
16 outrageous and to act with reckless disregard. (CACI 1600). Negligent Infliction of  
17 Emotional Distress has limited application. (CACI 1620, and notes).

18 Common to Negligent or Intentional Infliction of Emotional Distress is the  
19 requirement that the plaintiff suffer serious emotional distress. (CACI 1600 and 1620)

20  
21 There isn't a scintilla of evidence of the conduct required, or that McFarland  
22 suffered serious emotional distress.

23 //

24 //

25 //

26 //

27 //

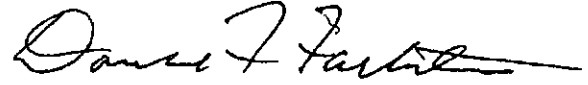
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1 In conclusion, Stefenoni and Baker respectfully request that their motion be  
2 granted.

3  
4 DATED: October 22, 2013

FARBSTEIN & BLACKMAN  
A Professional Corporation

5  
6  
7 By



DONALD F. FARBSTEIN  
MICHAEL A. FARBSTEIN  
Attorneys for Cross-Defendants  
MARTHA STEFENONI & SHIRLEY BAKER



1 **PROOF OF SERVICE**

2 *The National Grange of the Order of Patrons of Husbandry*

3 v.

4 *The California State Grange, et al. and related Cross-Actions*

5 Sacramento Superior Court Case No. 34-2012-00130439

6 I am a resident of the State of California, over the age of eighteen years, and not a party  
7 to the within action. I am employed in the office of a member of the bar of this court at whose  
8 direction the service was made. My business address is 411 Borel Avenue, Suite 425, San  
9 Mateo, California 94402-3518. On October 22, 2013, I served the following document(s):

10 **REPLY BRIEF OF CROSS DEFENDANTS MARTHA STEFENONI AND SHIRLEY  
11 BAKER IN SUPPORT OF SPECIAL MOTION TO STRIKE  
12 [ANTI-SLAPP, CCP §425.16]**

13 on the following person(s) by the method(s) indicated below:

14 Martin N. Jensen, Esq. 15 Thomas L. Riordan, Esq. 16 PORTER   SCOTT 17 350 University Avenue, Suite 200 18 Sacramento, California 95825	Attorneys for Plaintiffs and Cross-Defendants The National Grange of the Order of Patrons of Husbandry and Edward L. Luttrell Telephone: 916-929-1481 Facsimile: 916-927-3706
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[ ] by transmitting via facsimile on this date from fax number (650) 554-6240 the document(s) listed above to the fax number(s) set forth herein. The transmission was completed before 5:00 p.m. and was reported complete and without error.

[ ] by placing the document(s) listed above in a sealed envelope(s) with postage thereon fully prepaid, for deposit in the United States mail at San Mateo, California addressed as set forth herein. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid in the

REPLY BRIEF IN SUPPORT OF SPECIAL  
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ordinary course of business.

[ ] by placing the document(s) listed above in a sealed envelope(s) and by causing personal delivery of the envelope(s) to the person(s) at the address(es) set forth herein. Signed proof of service by the process server or delivery service is attached to this proof of service.

[ ] by personally delivering the document(s) listed above to the person(s) at the address(es) set forth herein.

[X] by placing the document(s) listed above in a sealed envelope(s) and consigning it to an express mail service for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth herein.

I declare under penalty of perjury under the laws of the United States and the State of California that the above is true and correct. Executed at San Mateo, California, on October 22, 2013.

  
\_\_\_\_\_  
ESTHER H. CHETCUTI